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Wednesday
July 10, 1991

Briefing on How To Use the Federal Register
For information on a briefing in New Orleans, LA, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St., Conference Room 1120, New Orleans, LA
RESERVATIONS: Federal Information Center 1–800–366–2998

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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to change the lead agency responsibility for the Champaign-Urbana, Illinois, Federal Wage System (FWS) wage area from the Department of Defense (DoD) to the Department of Veterans Affairs (DVA). This change is necessary because the current host activity for DoD, Chanute Air Force Base (AFB), is closing and is unable to continue to support the survey.

EFFECTIVE DATE: July 10, 1991.

FOR FURTHER INFORMATION CONTACT: Allan Summers (202) 606–2848 or FTS 266–2848.

SUPPLEMENTARY INFORMATION: Under the provisions of section 5343(a)(2) of title 5, United States Code, OPM is responsible for designating a lead agency for each FWS wage area. The Department of Defense is currently assigned lead agency responsibility for conducting the local wage survey and issuing the regular wage schedule for the Champaign-Urbana, Illinois, wage area. Chanute AFB, the host activity for the survey, is scheduled for closure in September 1993. The loss of staff at Chanute AFB and the extra workload associated with closure activities make it impossible for the base to continue to act as the host activity. With the closure of Chanute AFB, the Department of Veterans Affairs will become the largest FWS employer in the wage area. The DVA Medical Center in Danville, Illinois, is located in the survey area and is able to support the wage survey activities as host activity. DVA has agreed to assume responsibility for the survey. The change was discussed at the Federal Prevailing Rate Advisory Committee meeting of May 16, 1991, and there was unanimous agreement to the change.

Pursuant to sections 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The full-scale survey for the Champaign-Urbana, Illinois, wage area is scheduled to be ordered in September 1991. It is necessary to make this change immediately because of the preliminary work on the survey that must be accomplished prior to the actual survey, including the appointment of the Local Wage Survey Committee, the conduct of local hearings, and the selection and training of data collectors.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees and Federal agencies.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

Accordingly, OPM amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; section 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Appendix A to subpart B of part 532—Nationwide Schedule of Appropriated Fund Regular Wage Surveys

2. Appendix A to subpart B is amended by revising the lead agency listing for Champaign-Urbana, Illinois, from "DoD" to "VA".

Constance Berry Newman,
Director.

[FR Doc. 91–16432 Filed 7–9–91; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214, 251, and 258

[INS No: 1418–91]

Denial of Crewman Status in the Case of Certain Labor Disputes and Specifications of Authorized Employment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule; extension of comment period.

SUMMARY: On June 6, 1991, an interim rule was published in the **Federal Register** at 56 FR 26016, which implemented sections 202 and 203 of the Immigration Act of 1990, Public Law 101–649, passed November 29, 1990. The rule provides guidelines, among other things, pertaining to the circumstances under which nonimmigrant crewmen are permitted to perform longshore work in the United States. In response to requests from representatives of shipping companies and other interested persons, the Service has extended the deadline for submitting written comments to August 9, 1991.

DATES: This rule is effective May 28, 1991 through December 31, 1991. The Immigration and Naturalization Service (INS) will issue a final rule on or before the last effective date of this interim rule and after INS has had an opportunity to review public and agency comments. Interested persons are invited to submit written comments on or before August 9, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1418–91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Diane Hinckley, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., room 7123, Washington, DC 20536, telephone number (202) 514-2725.

Dated: July 2, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-16345 Filed 7-9-91; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD00

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to require commercial nuclear power plant licensees to monitor the effectiveness of maintenance activities for safety significant plant equipment in order to minimize the likelihood of failures and events caused by the lack of effective maintenance. The Commission believes that, to maintain safety, it is necessary to monitor the effectiveness of maintenance, and take timely and appropriate corrective action, where necessary, to ensure the continuing effectiveness of maintenance for the lifetime of nuclear power plants, particularly as plants age. The final rule requires that licensees monitor the performance or condition of certain structures, systems and components (SSCs) against licensee-established goals in a manner sufficient to provide reasonable assurance that those SSCs will be capable of performing their intended functions. Such monitoring would take into account industry-wide operating experience. Where monitoring proves unnecessary, licensees would be permitted the option of relying upon an appropriate preventive maintenance program. Licensees will be required to evaluate the overall effectiveness of their maintenance programs on at least an annual basis, again taking into account industry-wide operating experience, and adjust their programs where necessary to ensure that the prevention of failures is appropriately balanced with the minimization of unavailability of SSCs. Finally, in performing monitoring and maintenance activities which require taking equipment out of service, licensees should assess the total plant equipment that is out of service and determine the overall effect on the performance of safety functions.

EFFECTIVE DATE: The final rule will become effective July 10, 1996. However, the information collection requirements contained in 10 CFR 50.65 are not effective until the NRC publishes the Office of Management and Budget (OMB) clearance in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert Riggs, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-3732.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1988 (53 FR 9430), the Commission published a final Policy Statement on Maintenance of Nuclear Power Plants. In the Policy Statement, the Commission stated that it expected to publish a notice of proposed rulemaking and provided the general framework for the proposed rule. On November 28, 1988 (53 FR 47822), the Commission published a notice of proposed rulemaking to require commercial nuclear power plant licensees to implement a maintenance program to reduce the likelihood of failures and events caused by the lack of effective maintenance. In support of this rule, the Commission published a draft regulatory guide on maintenance on August 17, 1989 (54 FR 33988) for public comment. On December 8, 1989, the Commission issued a revised policy statement on maintenance (54 FR 50611) that stated the Commission's intention to hold rulemaking in abeyance for 18 months while it monitored industry initiatives and improvements and to assess the need for rulemaking in the maintenance area at the end of the 18 month period.

On April 13, 1990, in response to a Commission request, the staff forwarded the following four proposed criteria to be used in determining the need for maintenance rulemaking:

Criterion 1—Licensees have effectively implemented an adequate maintenance program or are committed to and proceeding towards this goal.

Criterion 2—Licensees exhibit a favorable trend in performance related to maintenance.

Criterion 3—Licensees are committed to the implementation of a maintenance performance standard acceptable to the NRC.

Criterion 4—Licensees have in place or are committed to an evaluation program for ensuring sustained performance in the maintenance area.

On May 25, 1990, the Commission approved these criteria and advised the staff that additional factors which may influence the Commission in determining the need for maintenance rulemaking were: (1) The ability to enforce maintenance programs or standards; (2) the presence of a strengthened commitment by the industry to monitor equipment performance to identify problematic components, systems, and functions, to conduct root cause analysis, to track corrective actions, and to feedback information into the maintenance program; and (3) provision of a mechanism by which the NRC could verify the effectiveness of the program.

On May 23, 1990, the Commission directed the staff to develop a second proposed rule that would be reliability-based. In addition, the Commission directed the staff to develop two procedural approaches for implementation of a rule. The first implementation approach, which allowed licensees to use an alternate NRC approved maintenance standard, was incorporated into both rules. The second approach was to include conceptual considerations for application of a maintenance rule only to licensees exhibiting poor performance in the maintenance area.

In SECY-91-110 dated April 26, 1991, the staff reported the results of the staff's evaluation of the need for maintenance rulemaking. The evaluation was based upon an assessment of licensee progress against the four Commission-approved criteria and the additional factors identified by the Commission. The staff also presented for Commission consideration options and recommendations pertaining to: (1) The issuance of a final policy statement; (2) the issuance of a final "process-oriented" rule and accompanying regulatory guide, based upon the November 1988 proposed rule, the August 1989 draft regulatory guide, and public comments received on both the proposed rule and draft regulatory guide; (3) the issuance of a proposed "reliability-based" rule and accompanying draft regulatory guide; (4) the application of a maintenance rule only to poor performers.

Need for a Rule

The Commission's determination that a maintenance rule is needed rests first on the conclusion that proper maintenance is essential to plant safety. As discussed in the Regulatory Analysis and the Backfit Analysis for this rule,

there is a clear link between effective maintenance and safety as it relates to such factors as number of transients and challenges to safety systems and the associated need for operability, availability and reliability of safety equipment. In addition, good maintenance is also important in providing assurance that failures of other than safety-related SSCs that could initiate or adversely affect a transient or accident are minimized. Minimizing challenges to safety systems is consistent with the Commission's defense-in-depth philosophy. Maintenance is also important to ensure that design assumptions and margins in the original design basis are either maintained or are not unacceptably degraded. Therefore, nuclear power plant maintenance is clearly important in protecting the public health and safety.

The results of the Commission's Maintenance Team Inspections (MTIs) indicated that licensees have adequate maintenance programs and have exhibited an improving trend in program implementation (Criterion 1). However, some common maintenance-related weaknesses were identified, such as inadequate root cause analysis leading to repetitive failures, lack of equipment performance trending, and the consideration of plant risk in the prioritization, planning and scheduling of maintenance. In general, as evidenced by plant operational performance data and the results of NRC assessments, the industry has exhibited a favorable trend in maintenance performance (Criterion 2).

With regard to licensee commitment to an NRC-approved maintenance performance standard (Criterion 3), the industry, through NUMARC, expressed to the Commission its commitment, in general, to the goal of improving performance in the area of maintenance. The industry asserted that all licensees are committed, by virtue of their membership in the industry-sponsored Institute for Nuclear Power Operations (INPO), to meeting, or striving to meet, the performance objectives contained in INPO 90-008, "Maintenance Programs in the Nuclear Power Industry." INPO 90-008 is primarily a compilation of preexisting objectives and criteria developed by INPO relating to maintenance. These objectives and criteria largely relate to maintenance program content and programmatic measures of performance. No written commitments were received from licensees and the industry-wide commitment which was received was at best indirect. The Commission believes that a sufficient commitment by licensees to a maintenance standard approved by the NRC has not been received.

With regard to licensees having in place or being committed to an evaluation program for ensuring sustained performance in the area of maintenance (Criterion 4), the industry, through NUMARC, indicated that all licensees will perform a comprehensive assessment of their maintenance programs against the performance objectives of INPO 90-008. These one-time assessments were to be conducted over a four year period. Additionally, periodic INPO evaluations which include the maintenance area will continue to be performed. However, the Commission believes that the industry's largely programmatic assessments and evaluations of licensee maintenance programs will not alone suffice. Instead, the Commission believes that the effectiveness of maintenance must be assessed on an ongoing basis in a manner which ensures that the desired result, reasonable assurance that key structures, systems, and components are capable of performing their intended function, is consistently achieved. Further, there is a continuing need for feedback of the results of such assessments and to factor those results into programmatic requirements, where assessment results indicate ineffective maintenance.

Considering the above points, the Commission is satisfied that the industry has been generally successful in bringing about substantial improvement in maintenance programs. Further, the improving trend established over the past several years has continued. However, the necessity for ongoing results-oriented assessments of maintenance effectiveness is indicated by the fact that, despite significant industry accomplishment in the areas of maintenance program content and implementation, plant events caused by the degradation or failure of plant equipment continue to occur as a result of instances of ineffective maintenance. Additionally, operational events have been exacerbated by or resulted from plant equipment being unavailable due to maintenance activities. Under existing requirements and industry maintenance initiatives, with relatively few exceptions, the availabilities of safety significant structures, systems, and components are not routinely assessed. These events and circumstances further attest to the need for ongoing results-oriented assessment of maintenance effectiveness since, together with equipment reliability, equipment availability is an important measure of maintenance effectiveness.

Regarding the additional factors considered by the Commission in determining the need for a maintenance rule, the Commission believes that there exists a need to broaden its capability to take timely enforcement action where maintenance activities fail to provide reasonable assurance that safety significant SSCs are capable of performing their intended function. With regard to the presence of a strengthened industry commitment to: Monitor equipment performance to identify problematic components, systems and functions; to conduct root cause analysis; to track corrective actions; and to feedback information into maintenance programs, the Commission has determined, based upon the weaknesses identified by the MTIs and the lack of sufficient commitments by licensees to a maintenance standard, that additional regulatory attention to these matters is warranted. Concerning the provision of a mechanism by which the NRC could verify the effectiveness of maintenance programs, neither the Commission nor the industry have been able to develop overall performance indicators which would readily provide unambiguous indication of overall maintenance effectiveness at any given plant. Thus, the Commission's consideration of these additional factors also weighs in favor of promulgating a rule that requires the monitoring and assessment of maintenance effectiveness. Additionally, consideration of these factors leads the Commission to conclude that it is necessary for such a rule to include requirements for corrective action to address instances of ineffective maintenance, and feedback of the results of monitoring and assessment into licensee maintenance programs.

In consideration of the above, the Commission has determined that a regulatory framework must be put in place which provides a mechanism for evaluating the overall continuing effectiveness of licensee maintenance programs, particularly as the plants continue to age. As noted previously, areas directly related to this issue were identified as common weaknesses during the NRC's Maintenance Team Inspections. These areas included inadequate root cause analysis, lack of equipment performance trending, and lack of consideration of risk in the prioritization, planning, and scheduling of maintenance. The Commission therefore concludes that a rule requiring that licensees monitor and assess the

effectiveness of maintenance activities is necessary.

In addition to all of the above considerations, the Commission's conclusion that a rule requiring that the effectiveness of maintenance be monitored is also predicated on the fact that the Commission's current regulations, regulatory guidance, and licensing practice do not clearly define the Commission's expectations with regard to ensuring the continued effectiveness of maintenance programs at nuclear power plants. The Commission has many individualized requirements relative to maintenance, including SSCs in the balance of plant (BOP), throughout the regulations. These include 10 CFR 50.34(a)(3)(i); 50.34(a)(7); 50.34(b)(6) (i), (ii), (iii), and (iv); 50.34(b)(9); 50.34(f)(1) (i), (ii), and (iii); 50.34(g); 50.34a(c); 50.36(a); 50.36(c) (2), (3), (5), and (7); 50.36a(a)(1); 50.49(b); 50.55a(g); part 50, appendix A, criteria 1, 13, 18, 21, 32, 36, 37, 40, 43, 45, 46, 52, 53; part 50, appendix B. More generally, 10 CFR 50.34(b)(6)(iv) requires licensees to address their plans for the conduct of "maintenance, surveillance, and periodic testing of structures, systems, and components." However, there is no guidance on exactly what these "plans for the conduct of maintenance" should include with regard to the monitoring of maintenance effectiveness.

The Commission's rules, guidance, and practice also require clarification as to what structures, systems, and components should be subject to maintenance requirements. Although § 50.34(b)(6)(iv) references maintenance for "structures, systems, and components" without further qualification, the guidance in Regulatory Guide 1.70, "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants—LWR Edition," (Revision 3, November 1978) is silent on the scope of SSCs that the maintenance program should cover (see Regulatory Guide 1.70, section 13.5.2). Regulatory Guide 1.70 also refers to Regulatory Guide 1.33, "Quality Assurance Program Requirements (Operation)." Regulatory Guide 1.33, which implements portions of 10 CFR part 50, appendix B, indicates in appendix A that "maintenance that can affect the performance of safety-related equipment should be properly preplanned and performed in accordance with written procedures * * *." The sample listing of maintenance operations requiring procedures also is limited to safety-related equipment. Regulatory Guide 1.70 also endorses industry standards for nuclear power plant operations that are limited to maintenance or modifications "which may affect the functioning of safety-related structures, systems, or components * * *." The Commission has previously interpreted its rules and guidance as requiring licensees to address the safety aspects of certain SSCs in the BOP. For example, 10 CFR 50.34(g) requires applicants for licenses after 1982 to evaluate their facility against the Standard Review Plan (SRP), NUREG–0800. The SRP requires licensees to evaluate a number of SSCs in the BOP (this is further discussed in the Commission's response to Question 7 in the summary of public comments).

Requirements and guidance for monitoring maintenance effectiveness and for taking corrective action when maintenance is ineffective should enhance the Commission's capability to take timely and effective action against licensees with inadequate or poorly conducted maintenance in order to ensure prompt resumption of effective maintenance activities.

For these reasons, the Commission concludes that a regulation that requires all nuclear power plant licensees to monitor the effectiveness of maintenance activities is warranted. The rule provides for continued emphasis on the defense-in-depth principle by including selected BOP SSCs, integrates risk consideration into the maintenance process, provides an enhanced regulatory basis for inspection and enforcement of BOP maintenance-related issues, and provides a strengthened regulatory basis for ensuring that the progress achieved to date is sustained in the future.

Description of Rule

The objective of the final rule is to require the monitoring of the overall continuing effectiveness of licensee maintenance programs to ensure that: (1) Safety related and certain non-safety related structures, systems, and components are capable of performing their intended functions; and (2) for non-safety related equipment, failures will not occur which prevent the fulfillment of safety-related functions, and failures resulting in scrams and unnecessary actuations of safety related systems are minimized. All references to the rule are to the new § 50.65.

Two approaches, which are prescribed in paragraphs (a)(1) and (a)(2) of the rule, are provided for assuring maintenance effectiveness.

The intention of paragraph (a)(1) of the rule is that the licensee establish a monitoring regime which is sufficient in scope to provide reasonable assurance that (1) intended safety, accident mitigation and transient mitigation functions of the structures, systems, and components (SSCs) described in paragraphs (b)(1) and (b)(2)(i) can be performed; and (2) for the SSCs described in paragraphs (b)(2)(ii) and (b)(2)(iii), failures will not occur which prevent the fulfillment of safety-related functions, and failures resulting in scrams and unnecessary actuations of safety related systems are minimized. Where failures are likely to cause loss of an intended function, monitoring should be predictive in nature, providing early warning of degradation. Monitoring activities for specific SSCs can be performance oriented (such as the monitoring of reliability and availability), condition-oriented (parameter trending), or both. The results of monitoring are required to be evaluated against the licensee-established goals. Goals should be established commensurate with an SSC's safety significance. Where available, the assumptions in and results of probabilistic risk assessments (PRAs) or individual plant examinations (IPEs) should be considered when establishing goals. The licensee is encouraged to consider analytical techniques, such as system unavailability modeling studies, which may be useful in developing goals; however, such analyses are not required.

The purpose of paragraph (a)(2) of the rule is to provide an alternate approach for those SSCs where it is not necessary to establish the monitoring regime required by (a)(1). For example, this provision might be used where an SSC, without preventive maintenance, has inherently high reliability and availability (*e.g.*, electrical cabling) or where the preventive maintenance necessary to achieve high reliability does not itself contribute significantly to unavailability (*e.g.*, moisture drainage from an air system accumulator). The licensee is encouraged to consider the use of reliability-based methods for developing the preventive maintenance programs covered under this section of the rule; however, the use of such methods is not required.

The purposes of paragraph (a)(3) of the rule are two-fold: (1) This provision requires that SSC performance or condition goals, performance or condition monitoring, and preventive maintenance activities implemented pursuant to paragraphs (a)(1) and (a)(2) be evaluated in light of SSC reliabilities and availabilities. In the case of SSCs treated under paragraph (a)(1), adjustments are to be made to goals, monitoring, or preventive maintenance requirements where equipment

performance or condition have not met established goals. Conversely, at any time the licensee may eliminate monitoring activities initiated in response to problematic equipment performance or industry experience once the root cause of the problem has been corrected or the adequacy of equipment performance has been confirmed. In the case of SSCs treated under paragraph (a)(2), adjustment of preventive maintenance requirements may be warranted where SSC availability is judged to be unacceptable. SSCs treated under paragraph (a)(2) which experience one or more maintenance-preventable failures, should become subject to the requirements of (a)(1) (see discussion below) or, where this is not feasible, may require other remedial action, such as modification or replacement.

(2) This provision provides that the planning and scheduling of maintenance should consider the cumulative impact of all equipment simultaneously out of service on plant safety.

A regulatory guide providing an acceptable methodology for implementing this rule will be developed by the NRC staff and issued for public comment. To permit ample opportunity for licensees to comply with the five year implementation schedule specified in the rule, the regulatory guide is expected to be available in final form two years from the date this rule is promulgated.

Additional Guidance

Scope of Monitoring

It is not the intent of the Commission to require a monitoring program so extensive that it detracts from licensees' ability to otherwise maintain equipment. The extent of monitoring may vary from system to system depending upon system importance to plant risk. Some monitoring at the component level may be necessary; however, it is envisioned that much of the monitoring could be done at the system or train functional level. For example, for less risk-significant systems, indicators of system reliability (where sufficient performance data exist) and availability may be all that is necessary. Some parameter trending, beyond that already required by NRC requirements to provide early warning of degradation, may also be necessary for critical components whose unavailability causes a system train to be unavailable or whose failure is otherwise unacceptable. Rather than monitoring the many SSCs which could cause plant scrams, the licensee may choose to establish a performance indicator for unplanned automatic scrams and, where scrams due to equipment failures have been problematic or where such scrams are anticipated, choose to monitor those initiators most likely to cause scrams.

It is not intended that this monitoring requirement duplicate activities currently being conducted, such as technical specification surveillance testing, which could be integrated with, and provide the basis for, the requisite level of monitoring. Consistent with the underlying purposes of the rule, maximum flexibility should be offered to licensees in establishing and modifying their monitoring activities.

Reliability and Availability of SSCs Subject to Either Paragraph (a)(1) or (a)(2)

SSCs which are treated under paragraph (a)(1) may have formally established reliability and availability goals against which they are explicitly monitored, where goals of this nature are appropriate. In addition, and regardless of the nature of the monitoring and goals established to satisfy paragraph (a)(1), reliability and availability over the longer term must be assessed periodically pursuant to the requirements of paragraph (a)(3), as part of the evaluation of goals, monitoring requirements, and preventive maintenance requirements.

The reliability and availability of SSCs which are treated under paragraph (a)(2) are required to be considered under the requirements of paragraph (a)(3), as part of the periodic assessment of preventive maintenance requirements.

Paragraph (a)(2) Is Not Intended To Be Used To Justify Continuing the Status Quo, Where the Status Quo Is Not Effective in Ensuring Acceptable Levels of Availability and Reliability

Under the terms of paragraph (a)(2), preventive maintenance must be demonstrated to be effective in controlling the performance or condition of an SSC such that the SSC remains capable of performing its intended function. Hence, it is expected that, where one or more maintenance-preventable failures occur on SSCs treated under this paragraph, the effectiveness of preventive maintenance is no longer demonstrated. As a result, the SSC would be required to be treated under the requirements of paragraph (a)(1) until such time as a performance history is established to demonstrate that reliability and availability are once again effectively controlled by an established preventive maintenance regimen. Once such a demonstration has been made, it would be acceptable to return to treating the SSC under paragraph (a)(2).

Paragraph (a)(3)—Assessing the Cumulative Impact of Out-of-Service Equipment on Performance of Safety Functions—Use of PRA

Assessing the cumulative impact of out-of service equipment on the performance of safety functions, as called for under paragraph (a)(3), is intended to ensure that the plant is not placed in risk-significant configurations. These assessments do not necessarily require that a quantitative assessment of probabilistic risk be performed. The level of sophistication with which such assessments are performed is expected to vary, based upon the circumstances involved. The assessments may range anywhere from simple deterministic judgments to the use of an on-line living PRA. It is to be expected that, over time, assessments of this type will be refined based upon technological improvement and experience.

Derivation of the Final Rule

The final rule is comprised of a subset of the aspects of the proposed maintenance rule and its associated draft regulatory guide, which were issued for public comment on November 10, 1988, and on August 17, 1989, respectively. The final rule includes only those aspects that are "results-oriented", including those addressing establishment of goals, monitoring and assessment of maintenance effectiveness, feedback and corrective actions, and, in a more limited manner, predictive and preventive maintenance. These aspects were detailed in Regulatory Positions C.3, C.5, and C.6 of the draft regulatory guide and were the subject of considerable public comment in response to Questions 3, 9, 10, and 11 posed by the Commission when it issued the proposed maintenance rule. These comments are addressed in the summary of public comments accompanying the final rule. Details of the derivation are discussed below.

Establishment of Goals and Monitoring

Section 50.65(a)(1) requires the monitoring of performance or condition of structures, systems, and components (SSCs) against licensee-established goals. These requirements were drawn from the requirements of the proposed rule, in §§ 50.65(c) (1) and (2), and elements (b) (1)(iii), (5), (10), and (17). The statement of considerations (SOC) for the proposed rule also discussed the process of establishing goals, monitoring, and taking appropriate corrective action, see 53 FR 47825.

Comments on appropriate methods of monitoring, the need for, form of, and possible kinds of effectiveness criteria, and the use of performance indicators for component reliability and maintenance performance were requested, see questions 9 and 10, 53 FR 47825. Comments on criteria and quantitative goals were also requested in the **Federal Register** notice accompanying the publication of the draft regulatory guide, see 54 FR 33983. The draft regulatory guide discussed goal setting and monitoring in sections C.1.1, C.1.3, C.3.2, C.4.6.4, C.5.2.2, C.5.2.3, C.5.2.4, and C.6.

Consideration of industry-wide operating experience under § 50.65(a)(1) as well as § 50.65(a)(3) of the final rule were anticipated by: (1) The proposed rule's discussion of a draft NUREG report which surveyed maintenance practices, 53 FR 47824, (2) a recommendation in the SOC concerning use of the NPRDS, *id.*, and (3) Questions 10 and 11 of the SOC, 53 FR 47825. It was also alluded to in section C.5.2.3 of the regulatory guide, and discussed in section C.3.2.

Corrective Action

The final rule's requirements that corrective action be taken in response to the results of monitoring, and that at least an annual evaluation of the monitoring, goal establishment and corrective action activities were presaged by the proposed rule's requirement in § 50.65(c)(2) for assessment the effectiveness of the maintenance program and making appropriate improvements, Element (1)(ii) of the proposed rule, and the regulatory guide's discussion on the functioning of the maintenance process, *e.g.*, sections C.1, C.1.3 and C.1.4, C.3.2, C.4, C.5.1, and C.6.

Preventive Maintenance

Preventive maintenance, which is endorsed by § 50.65(a)(2) of the final rule, was one of the elements of the proposed rule, see 53 FR 47828, Element 1(ii). The regulatory guide addressed preventive (also referred to as "proactive") maintenance in sections C.2 and C.4.6.1.

Scope of SSCs Subject to Maintenance

The scope of SSCs subject to the final maintenance rule includes safety-related SSCs, and certain "non-safety" SSCs in the BOP which meet one or more of four specific criteria. See final rule, § 50.65(b). The matter of scope was addressed in the proposed rule, which suggested that all SSCs in a nuclear power plant, including those in the balance of plant (BOP) were to be subject to the proposed rule's maintenance requirements. See proposed rule, § 50.65(b). The regulatory guide indicated that the rule applies "to all parts of the plant that could significantly impact safe operation and security, including the BOP". See Sections B., C.1. Comments on scope of SSCs were solicited in the SOC for the proposed rule at Question 7 (53 FR at 47825), and in the proposed regulatory guide at Question 2 (see 54 FR 33983).

As shown by the above, all of the significant provisions of the final rule were presaged in the proposed rule and in the proposed regulatory guide. The final rule is not a significant departure from NRC proposals offered for public comment except that, as noted, the final rule is a subset of those proposals. Since all of the elements of the final rule were the subject of extensive public comment, there is no need to publish the final rule as a proposed rule for still more comment. As noted, there will be further comment on the rule's implementing guidance. Clearly, given the period allowed for implementation, there can be adjustments made to the rule before it becomes effective should further developments so require.

Industry Programs

The Commission encourages industry initiatives and responsibility for problem identification and resolution. Several guidelines exist in the industry (e.g., INPO 90-008, "Maintenance Programs in the Nuclear Power Industry," Institute of Nuclear Power Operations) that are directed toward providing performance objectives and criteria for effective maintenance programs. With regard to the programmatic aspects of maintenance, the Commission encourages the industry to continue the development and improvement of such guidelines and to standardize recommendations and guidance for plant maintenance programs. In acknowledgement of the generally satisfactory state of maintenance programs, the final rule provides great flexibility for the industry to continue developing, improving and implementing recommendations and guidance concerning maintenance programs. The Commission encourages such activities, especially as they support improvements in the evaluation of maintenance program effectiveness.

Implementation and Compliance

The focus of the rule is on the results achieved through maintenance and, in this regard, it is not the intent of the rule that existing licensees necessarily develop new maintenance programs. However, because the Maintenance Team Inspections identified weaknesses in some licensees' maintenance programs, it is expected that each licensee will assess its program and take appropriate action to improve those areas where weaknesses were identified. The rule has a five year implementation schedule with supporting regulatory guide development and promulgation expected within the first two years. This schedule allows three years for licensee development beyond the time that final guidance is expected to be available. Implementation and compliance with the rule is achieved through SSC performance or condition monitoring against appropriate licensee-established goals or, as an alternative, through the conduct of preventive maintenance that has been demonstrated to be effective. Where the performance or condition of SSCs is determined to be unacceptable, corrective action is required. Additionally, compliance is achieved through the periodic assessment of monitoring, goals, and preventive maintenance activities to ensure that the objective of minimizing SSC failures is being met, consistent with the objective of minimizing SSC unavailability due to monitoring and preventive maintenance.

Summary of Public Comments

The comment period for the proposed rule closed February 27, 1989, and for the draft regulatory guide October 17, 1989. Thirty-five comments on the proposed rule were received during the official comment period and fifty-seven were filed after the comment period closed. Thirty-six comments were received on the regulatory guide. All comment letters were considered in formulation of the final rule. Comment letters were also considered in arriving at the Commission's decisions to revise the accompanying regulatory guide to reflect the final rule's narrowed focus on results, to provide an opportunity for public comment on the revised regulatory guide, and to issue final guidance well in advance of the date specified for rule implementation.

Of the 92 comments on the proposed rule, 67 were filed by utilities, 11 by industry groups and trade associations, 4 by individuals, 3 by vendors, 3 by public interest groups, 2 by Federal Agencies, and; 2 by state groups/individuals. Of the 36 comments on the regulatory guide, 22 were filed by utilities, 5 by industry and professional groups, 1 by State, 5 by corporations, 2 by individuals, and 1 by a vendor. The Commission is appreciative of the time and effort expended by those who submitted comments. Maintenance is a

matter of considerable priority and importance, and the views expressed in the comments have been very helpful to the Commission in its deliberation. Many comments came from individual licensees, but most supported the comments prepared by the Nuclear Management Resource Council (NUMARC).

In summary, most of the commenters on the proposed rule stated that there was no need for a separate rule on maintenance for nuclear power plants because (1) the NRC already has regulatory authority and methods in place to provide an overview of maintenance program capability to ensure adequate protection of the public health and safety, (2) there has been no demonstration that the rule will increase public safety and it may actually decrease safety by diverting industry efforts away from maintenance to support activities directed toward demonstrating compliance, (3) good maintenance assessment indicators already exist for both industry and the NRC, such as the Institute of Nuclear Power Operations (INPO) performance indicators, Systematic Assessment of Licensee Performance (SALP) reviews, the NRC Maintenance Inspection Program, and Licensee Event Reports (LER's), and (4) the industry already has maintenance initiatives under way and, as a whole, the industry is improving in the maintenance area.

Many commenters considered the proposed rule unbounded in scope because there are no limits established for the BOP. They were concerned that, with such a broad and undefined scope, the industry cannot assess the impact of the proposed rule. Therefore, it was suggested that, at the very least, the final rule should be postponed until issuance of the regulatory guide.

NUMARC and most utilities commented that, without measures of effectiveness stated in the proposed rule, they did not know what requirements or expectations would be needed to implement the proposed rule and determine regulatory compliance. There was concern that effectiveness, as specified in the proposed 10 CFR 50.65(c), is a qualitative matter and subject to different interpretation by both licensees and the NRC. There was also concern that the lack of criteria describing adequate programs places a burden on the industry and public to assess what is needed for the broad subject area defined in the proposed rule by the NRC and that the proposed rule establishes requirements for specific program elements (10 CFR 50.65(b)) that are not defined. Most commenters felt that a prescribed set of maintenance performance indicators (MPIs) cannot be used as the sole basis for evaluating the effectiveness of a maintenance program.

NUMARC believes that the existing regulations do not establish requirements similar to the proposed rule, especially with regard to BOP equipment. Therefore, licensees will be forced to modify their maintenance programs to satisfy new requirements, which means the standards of a backfit analysis (10 CFR 50.109) apply.

NUMARC further stated that the "adequate protection" standard of 10 CFR 50.109(a)(4) does not apply with regard to implementing the proposed rule. They feel that this was not supported by data provided in the proposed rule or the accompanying regulatory analysis. They felt that the public risk reduction data used in the regulatory analysis was outdated, that recent data by both the industry and the NRC should be used to evaluate public risk reduction, and that the increased costs associated with implementation were grossly underestimated.

NUMARC further believes that industry objectives and programs are consistent with the NRC expectations stated in the March 1988 Policy Statement on Maintenance of Nuclear Power Plants. NUMARC believes that increased emphasis has been placed on maintenance, improvements in performance and reliability have been achieved, and therefore the promulgation of a rule is now unnecessary and unjustified. They believe that the NRC should take action against the few poor maintenance performers, rather than promulgate a rule across the whole industry.

Two individuals, three public interest groups, and two State representatives were supportive of a maintenance rule but were not necessarily in total agreement with the way the rule was formulated or how it should be implemented. They believed that nuclear power plant maintenance directly affects the health, safety, and economic well-being of the public and that nuclear facilities not properly maintained will be unsafe and uneconomical, even with the best design, construction, and operation. They believe that improper maintenance, even of components not previously associated with safety, can have adverse safety consequences. Furthermore, they believe that the superior performance of nuclear power plants in other countries is attributed to their maintenance program. One State representative believes that the maintenance standard should be published initially as a guide and not as a rule that utilities should have the prerogative to organize in the most resource-effective manner their approach to meeting the key components of the standard. The Commission could then evaluate experience under the regulatory guide to determine whether a rule is required. One individual was against a rule because the industry has a good safety record and the rule would be costly and an unnecessary burden on the industry.

The comments on the regulatory guide raised many of the same issues as those comments associated with the proposed rule. In general the issues addressed were the level of detail in the regulatory guide; the scope of structures, systems, and components covered by the guide; the criteria to be used to determine if a maintenance program is effective; the use of quantitative goals for determining satisfactory level of performance for plant maintenance programs; the quantitative measures for such goals; the usefulness of NPRDS data for assessing effectiveness of plant maintenance programs; the usefulness of PRAs for plant maintenance programs; the timeliness of corrective actions; the definition of maintenance; the documentation of the technical basis of a maintenance program; and the extent of root cause analysis and feedback.

These comments on the proposed rule were either repeated or expanded in the commenters' responses to the 12 questions posed by the Commission in the Statement of Considerations for the proposed maintenance rule. These questions are listed below; and each response contains a synopsis of the public comment and the Commission response for that particular question. Where appropriate, the responses reflect the revisions to the final version of the maintenance rule. The responses also include consideration of the public comments received on the draft regulatory guide.

1. Is it appropriate for the nuclear power industry to develop a Maintenance Standard and, if so, would the industry develop such a Maintenance Standard?

Comments—Most commenters feel that another maintenance standard is not needed. They believe that the guidelines developed by INPO provide the basic framework of a standard and could be expanded to accommodate NRC requirements. The Policy Statement on Maintenance, existing industry standards, and the INPO Guidelines for the Conduct of Maintenance at Nuclear Power Plants

contain the information needed to ensure effective maintenance programs. If a standard is to be developed, all utilities prefer a standard developed by industry rather than by NRC with INPO or NUMARC taking the lead. One citizen's group stated that the NRC, not the industry, should develop the maintenance standard. No commitment was received during the comment period to develop a maintenance standard.

Response—The Commission encouraged the industry to develop a maintenance standard because the Commission believed that the development of a standard would allow maximum utilization of current industry initiatives toward developing and implementing effective maintenance programs and that licensee participation in the development of the standard would provide additional incentive and responsibility for improving plant maintenance programs. In addition, the Commission believed that the effort would benefit from industry's expertise in this area and that it would be more likely that the maintenance practices from plants with good maintenance programs would become part of the industry-developed maintenance standard.

On April 17, 1990, NUMARC submitted INPO 90–008, "Maintenance Programs in the Nuclear Power Industry," as the industry maintenance standard. The Commission reviewed this document and found that, with minor modification, it formed a comprehensive description of the necessary attributes of a maintenance program. In acknowledgement of this document, the generally favorable results of the NRC's Maintenance Team Inspections regarding the adequacy of licensees' maintenance programs, and the many other industry initiatives in this area, the Commission revised the rule to emphasize the effectiveness or results of maintenance programs and de-emphasize the programmatic aspects of maintenance. Also, in acknowledgement of the generally satisfactory state of maintenance programs the final rule provides great flexibility for the industry to continue developing, improving and implementing recommendations and guidance concerning maintenance programs. The Commission encourages such activities, especially as they support improvements in the evaluation of maintenance program effectiveness. However, because the rule has been modified to de-emphasize programmatic requirements of maintenance, the Commission does not currently intend to formally endorse an industry maintenance program standard.

2. What level of detail should be included in the Maintenance Standard?

Comments—NUMARC and the utilities believe that any maintenance guidelines or standard should provide a general description of the necessary elements of a good maintenance program, but the details for implementation should be left to the individual utility. The emphasis should be on meeting the intent so as not to force a utility to change a well-working individual program solely for the purpose of standardization across the industry. The standard should have a balance of flexibility and specificity to avoid vague criteria that will lead to areas of varying interpretation and dispute. The current industry performance objectives, criteria, and guidelines developed by INPO allow the flexibility for individual utilities to meet the intent of the guidelines by meeting the criteria directly or by other appropriate means. One utility feels that it would be counterproductive to develop a minimum standard that could potentially lower the level of performance for the entire industry when only a few plants are experiencing problems. Another utility stated that a new rule or regulatory guidance will result in increased documentation, decreased flexibility to change and adjust programs as conditions or technology change, and decreased incentive for the maintenance staff to improve or enhance their maintenance capability. This could lead to a diversion of utility resources from safety-related activities and increase costs with minimal benefits.

The commenters generally feel that any maintenance standard requiring an analysis of all SSCs for function and objective was practically unattainable and would significantly divert technical resources necessary for safe and reliable operation of a nuclear plant, with questionable benefit. Any standards, guidelines, or criteria should be tailored appropriately to the safety significance of the equipment being maintained and the function being performed.

Response—As noted in the Commission response to Item 1, the final rule has been modified to establish a framework for evaluating the effectiveness of maintenance programs. As such, the rule describes the basic elements for measuring the effectiveness of maintenance and taking appropriate corrective action where maintenance is found to be ineffective. These elements include establishing goals, monitoring and assessment against these goals, feedback, and appropriate corrective action. The regulatory guide will be revised to reflect the rule's narrower focus on results and maintenance program effectiveness, and will describe a means for meeting the requirements of 10 CFR 50.65 acceptable to the staff. The rule and regulatory guide combination will provide a framework for evaluating the continuing overall effectiveness of maintenance, focusing on the objective of an effective maintenance program, while at the same time permitting licensees broad discretion and flexibility in the formulation and implementation of their individual maintenance programs.

The rule does not require a monitoring program so broad in scope that it detracts from a licensee's ability to otherwise maintain its equipment. The extent of monitoring may vary from system to system, depending upon system importance to risk. Some monitoring at the component level may be necessary; however, it is envisioned that the majority of monitoring could be done at the system or train functional level. This monitoring requirement is not intended to duplicate activities currently being conducted which could be integrated with, and provide the basis for, the requisite level of monitoring. The Commission response to Question 7 has further details on scope and level of detail.

3. Is two years a reasonable time to develop and implement a standard?

Comments—NUMARC and the utilities feel that two years was enough time to develop a standard depending on the scope of the BOP SSCs and components that need to be addressed. They stated that the systematic evaluation of all SSCs as described in the proposed rule alone would require more than two years. Most of the industry agrees that it would take two years to develop the standard and three to five years to implement it. One citizen's group feels that two years is too long for developing and implementing a standard; one year would be more appropriate.

Response—During the time the Commission held rulemaking in abeyance, the industry developed and submitted INPO 90–008 to the Commission. The Commission also developed a regulatory guide that incorporated appropriate public comments. Furthermore, the MTIs found that licensee maintenance programs have improved, and there are programs for improving maintenance developed by the industry. Therefore, the Commission believes that two years was ample time to develop and implement a standard.

The Commission acknowledges that a systematic evaluation of SSCs could require as much as two or more years. Consequently, the final rule has a five year implementation schedule which allows at least three years for these evaluations beyond the time when final guidance is expected to be available.

4. Is it appropriate for a designated third party to certify plant maintenance programs to comply with the Maintenance Standard; if so, would an organization be willing to perform such certification?

Comments—Of the comments that addressed this question, most stated that it would be inappropriate for the NRC to delegate certification responsibility to a third party. The degree of opposition ranged from "not necessary" to "vigorously opposed." Most comments stated that third party certification would be unnecessary because existing measures that accomplish this function such as maintenance inspections and INPO evaluations. Some comments indicated that INPO could perform certification but not if a rule existed since that would place INPO in the position of a regulator. One respondent clearly stated that INPO should not be allowed to perform maintenance certifications for the NRC.

Response—It was the Commission's intent to build upon industry initiatives to encourage good maintenance practices and common standards. A certification process against a maintenance standard by a third party was raised as an option that would have provided some degree of consistency and independence without relieving NRC of its regulatory responsibility to oversee the process.

Because a viable third party certification process was not offered by the industry, the Commission is no longer pursuing this as an option. Additionally, as noted in Question 1, because the rule has been modified to de-emphasize programmatic requirements of maintenance, the Commission does not currently intend to formally endorse an industry maintenance program standard.

5. The Commission plans to issue by November 1989, a regulatory guide establishing standards and criteria for determining what constitutes an effective maintenance program. This regulatory guide is being developed in parallel with the final rulemaking. The Commission encourages the industry to develop standards and acceptance criteria. If an acceptable industry standard is available in this timeframe, the Commission will consider endorsing the industry standard in the regulatory guide. An industry commitment to develop a maintenance standard, consistent with the Commission's schedule to issue a final regulatory guide by November 1989, would be necessary during this public comment period.

Comments—Most respondents believe that issuance of a rule without public comment on a regulatory guide was inappropriate. Many feel that the most important NRC document concerning maintenance will be the regulatory guide and not the maintenance rule. Industry feels that the current standards as embodied in publications such as INPO 85–038 are sufficient and that a rule and regulatory guide are unnecessary. Several industry respondents said that they would be willing to participate with the NRC in developing a standard but that the November 1989 time constraint was unrealistic. Several respondents appeared to feel that the proper way to upgrade maintenance would be by first developing a regulatory guide and then a rule if use of the guide indicated that such a rule was needed. If the current industry standards were not enough, most feel that the NRC has the responsibility to develop the regulatory guide, though the industry respondents feel that they should have input to such a guide. INPO's position is that use of INPO 85–038 as a basis for a regulatory guide would be inappropriate.

Response—The Commission believes that, by clearly putting forth a standard for an effective maintenance program in one document, guidance and stability would be provided to help ensure that the maintenance programs of all licensed plants achieve and maintain a satisfactory level of effectiveness. The Commission believes that the development of a standard by industry would support industry's current initiatives toward developing and implementing effective maintenance programs, and that utility participation in preparing a maintenance standard would provide additional experience, incentive, and responsibility for improving plant maintenance programs. The Commission was encouraged by NUMARC's submittal of INPO 90–008 as an industry maintenance standard. In acknowledgement of this document, the generally favorable results of the NRC's Maintenance Team Inspections regarding the adequacy of licensees' maintenance programs, and the many other industry initiatives in this area, the Commission revise the rule to emphasize the effectiveness or results of maintenance programs and de-emphasize the programmatic aspects of maintenance. Also, in acknowledgement of the generally satisfactory state of maintenance programs, the final rule provides great flexibility for the industry to continue developing, improving and implementing recommendations and guidance concerning maintenance programs. The Commission encourages such activities, especially as they support improvements in the evaluation of maintenance program effectiveness. However, because the rule has been modified to de-emphasize programmatic requirements of maintenance, the Commission does not currently intend to formally endorse an industry maintenance program standard.

The Commission does not agree with commenters who suggested the issuance of a regulatory guide without a rule. The Commission desires to put forth requirements for evaluating the effectiveness of maintenance programs, including the issuance of implementing guidance, to clarify NRC regulatory purview and to provide additional enforceability. The revised regulatory guide will reflect the narrower, results-oriented focus of the rule. The details for the conduct of activities supporting maintenance will not be specified and should be developed by the licensee to ensure the adequate performance of plant equipment. Several guidelines exist in the industry (e.g., INPO 90–008 "Maintenance Programs in the Nuclear Power Industry," Institute of Nuclear Power Operations, and others sponsored by ANS, ASME, and EPRI) directed toward providing detailed recommendations for the effective conduct of maintenance activities. The industry is encouraged to continue the development and improvement of such guidelines and to standardize recommendations and guidance for plant maintenance programs.

6. The Commission believes that the proposed maintenance rule should be considered under 10 CFR 50.109(a)(4) of the backfit rule which would exempt the maintenance rule from backfit requirements based on the precepts that effective maintenance is necessary to assure adequate public protection and that the proposed rule codifies and standardizes previously existing Commission requirements, both explicit and implicit, in plant technical specifications, licensee safety analysis reports, and 10 CFR part 50, appendix B. The Commission requests public comment concerning the need for a backfit analysis for this rulemaking.

Comments—The nuclear industry commenters uniformly believe that a backfit analysis must be prepared for the maintenance rule. The most comprehensive responses were

submitted by two nuclear industry groups: The Nuclear Utility Backfitting and Reform Group (NUBARG), and NUMARC. Many utility commenters endorsed NUMARC's response or repeated arguments made by NUMARC. A law firm, Conner and Wetterhahn, also provided substantial comments that were generally consistent with those from NUMARC and NUBARG. In addition, a number of utility commenters joined in NUBARG's comments. The U.S. Department of Energy also agrees with the industry on a need for a backfit analysis. Only one commenter, Nuclear Information and Resource Service (NIRS), supported the Commission's position.

NUBARG contends that the Commission "misapplied" the adequate protection exemption in the backfit rule in four respects. First, NUBARG asserted that the Commission prevented the public from reasonably commenting on the backfit issue by failing to specify whether it was relying on 10 CFR 50.109(a)(4)(ii), which exempts from analysis those rules that are "necessary to ensure that [a] facility provides adequate protection to the health and safety of the public," or the provisions of § 50.109(a)(4)(iii), which exempts those rules that involve "defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate."

Next, after quoting from two passages in the notice of proposed rulemaking for the maintenance rule that suggest that the Commission is relying on both § 50.109(a)(4) (ii) and (iii), NUBARG appeared to contend that such reliance is logically inconsistent. No reasoned argument was presented by NUBARG in support of its contention, nor did NUBARG specifically criticize the Commission's reliance on § 50.109(a)(4)(ii). Rather, NUBARG focused on § 50.109(a)(4)(iii), arguing that the Commission's position that effective maintenance is necessary for adequate protection must logically rest on the presumption that none of the currently operating nuclear power plants do provide adequate protection.

In any event, NUBARG also argued that the Commission's decision not to prepare a backfit analysis for the maintenance rule represents an unwarranted departure from the policies underlying the backfit rule—an "alarming retreat." Lastly, NUBARG argued that the Commission's reliance on the "adequate protection" exemption of § 50.109(a)(4) is in "logical conflict" with the Commission's alternative ground that the rule is justified on the basis of the criteria contained in the backfit rule.

NUMARC followed and expanded on NUBARG's arguments. NUMARC asserted that a backfit analysis is necessary solely because the maintenance rule would impose substantial new requirements on licensees and require the expenditure of significant resources by virtue of the maintenance rule's expansion of maintenance to the BOP. This argument was echoed by several other utility commenters. Next NUMARC attacked the Commission's assertion that the maintenance rule codifies and standardizes previously existing requirements by pointing out that the rule would require maintenance for SSCs in the BOP. NUMARC also followed the NUBARG reasoning that any redefinition of the standard of adequate protection to include maintenance must necessarily presume and admit that "all U.S. nuclear power plants are currently operating at a level below the 'adequate protection' baseline until they improve their maintenance program."

Although NIRS agreed with the Commission that a backfit analysis need not be prepared for the maintenance rule, their agreement was partially couched on their position that the 10 CFR 50.109 is an invalid rule.

Response—The Commission has determined to prepare a backfit analysis for the final rule.

7. The Commission believes that the inclusion of balance of plant (BOP) equipment in the proposed maintenance rule is necessary and proper. However, the Commission also recognizes that some licensee maintenance programs, as presently configured, apply to structures, systems, and components that are without question, irrelevant to protection of public health and safety from radiological hazards associated with the operation of the nuclear power plant. The Commission requests public comment concerning what limitation, if any, should be placed on the final maintenance rule to provide some licensee flexibility in this regard.

Comments opposing including BOP equipment are summarized as follows: BOP equipment is outside the NRC's jurisdiction; the statutory jurisdiction of the NRC to regulate BOP components is limited to those BOP structures, systems, and comments that are related or important to nuclear safety; the economic impact of including nonsafety BOP equipment would be staggering; and the resulting improvement to safe operation of the plant would be disproportionate to the cost involved or could divert resources that would be more profitably spent on critical safety systems and components. The proposed rule did not define BOP SSCs, thereby not providing a meaningful opportunity for public comment. NRC should withdraw the proposed rule and develop a definition and a list of typical BOP SSCs that are related or important to nuclear safety. BOP systems were not built to the standards of safety-related equipment and will not be capable of being maintained at the same level of readiness. For example, the proposed rule would require the proper maintenance of a component that is not required to be properly installed. However, if NRC proceeds with rulemaking and if BOP SSCs must be considered, it should be on a graded approach depending on a given BOP system's potential impact on safety functions. The utility must retain the ability to determine the requirements applicable to specific SSCs based on safety, reliability, and economic considerations. Instead of including all BOP SSCs, the rule must focus on the maintenance of functions whose failure would threaten public health and safety.

Comments in favor of including BOP SSCs are summarized as follows: The maintenance rule should cover the whole plant. Unplanned reactor trips often originate in BOP systems. Furthermore, seemingly irrelevant parts of the plant can affect plant operations in unforeseen ways—for example, at Surry in the aftermath of the pipe break.

Response—The Commission does not agree that maintenance of SSCs in the BOP is beyond the statutory jurisdiction of the Commission. Pursuant to section 161 and 182 of the Atomic Energy Act (AEA), the Commission has broad authority to protect the public health and safety, and the common defense and security and to minimize losses to life and property. Maintenance of SSCs in the BOP falls within this regulatory authority because such SSCs can and do have a significant effect on safety.

With regard to safety, SSCs in the BOP have initiated transients and caused scrams and safety injection. Probabilistic risk assessments (PRAs) confirm that, for many plants, dominant accident sequences are initiated by transients in the BOP such as loss of offsite power or loss of feedwater. Therefore, to ensure that licensees operate safely, NRC's regulatory program is intended to ensure both a low frequency of transients that challenge safety systems and a high reliability of safety systems to respond to these challenges. This approach to regulation is part of the fundamental

principle of defense-in-depth that underlies all NRC regulation. Defense-in-depth provides for both accident prevention and accident mitigation with principal emphasis on prevention.

Therefore, the Commission is well within its statutory jurisdiction in requiring that all SSCs that can significantly affect safety, including those in the BOP, be properly maintained. Indeed, the Commission's regulations already reflect the importance of maintenance of SSCs in ensuring adequate protection to public health and safety. Section 50.34(b)(6)(iv) requires an FSAR to include the "plans for conduct of normal operations, including maintenance, surveillance, and periodic testing of structures, systems, and components." The Standard Review Plan (SRP) (NUREG-0800), against which applicants for licenses after 1982 are required to evaluate their facility (see 10 CFR 50.34(q)), requires applicants to evaluate a number of SSCs in the BOP, including design and installation as they affect safety. For example, the pressurizer relief tank system, which is "nonsafety related," is addressed in section 5.4.11 of the SRP. Of note is the rational for reviewing the design of the pressurizer relief tank:

"The review is primarily directed toward assuring that its operation is consistent with transient analyses of related systems and that failure or malfunction of the system could not adversely affect essential systems or components is accordance with applicable criteria."

Thus, the Commission has previously recognized that certain SSCs in the BOP can have a significant effect on safety and has exercised its regulatory authority by requiring the evaluation of the potential effect of nonsafety-related SSCs on safety. This is the same rationale for requiring maintenance of SSCs, including those in the BOP, that can significantly affect safety.

The Commission agrees with the comments that the scope of the rule should be narrowed; not all of the BOP has the same safety significance. Accordingly, the scope has been modified to include only those BOP SSCs whose failure could most directly threaten public health and safety. Therefore, the scope of the rule has been modified as follows:

The scope of the monitoring program * * * shall include safety related and nonsafety related structures, systems, and components as follows:

(1) Safety related structures, systems, or components that are relied upon to remain functional during the following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shutdown the reactor and maintain it in a safe shutdown condition, and the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the 10 CFR part 100 guidelines.

(2) Nonsafety related structures, systems, or components:

(i) That are relied upon to mitigate accidents or transients or are used in plant emergency operating procedures (EOPs); or

(ii) Whose failure could prevent safety-related structures, systems, and components from fulfilling their safety-related function; or

(iii) Whose failure could cause a reactor scram or actuation of a safety-related system.

This scope does not go beyond the jurisdiction of the NRC. This clarification of the scope should bound the scope, focus licensee resources on SSCs with the most safety significance, and reduce the cost impact projected by the comments.

The Commission recognizes that BOP SSCs may have been designed and built with normal industrial quality and may not meet the standards in appendix B to 10 CFR part 50. It is not the intent to require licensees to generate paperwork to document the basis for the design, fabrication, and construction of BOP equipment not covered by appendix B. Instead, it is the intent to ensure that each licensee's maintenance program minimizes failures in those BOP SSCs that affect safe operation of the plant. In response to comments, security has been deleted from 10 CFR 50.65 as it is adequately addressed in § 73.46(g) and § 73.55(g).

8. The Commission believes that individual worker accountability plays an important role in an effective maintenance program. The Commission is, therefore, soliciting comments on the means for incorporating this consideration into a licensee's maintenance program.

Comments—Respondents consistently agreed that worker accountability was an important and necessary part of a good maintenance program. Several of them gave examples for how their utility holds its employees accountable for their work. These examples all fell within the broad context of the personnel management system, i.e., selection, training, performance appraisal, supervision, promotional policies, etc. Most feel that rulemaking on worker accountability is impossible, unnecessary, or inappropriate. Several cited the fact that worker accountability was a subject of negotiation between utility management and labor bargaining units. Several cited existing regulations (10 CFR part 2, appendix C, and 10 CFR 50.110) as already requiring worker accountability. One respondent said that the licensee should be responsible, not the worker. One respondent expressed a concern that a rule that included worker accountability would be interpreted as punitive by workers.

Response—The Commission and industry have both recognized the importance of developing an attitude of accountability on the part of each and every worker in a nuclear power plant. The Commission agrees with industry that regulation of this area would be difficult to enforce objectively. The Commission concludes that each licensee should include considerations for emphasizing worker accountability based on local conditions; and the Commission will not attempt to deal specifically with this issue in the rule or regulatory guide.

9. The Commission desires to establish criteria within the maintenance rule which would form the basis for determining when a maintenance program is fully effective and additional improvement is not warranted from a safety standpoint. Such criteria might be either quantitative or qualitative and could be based on specific measurable attributes, on overall plant performance, on program results, or on other attributes. The Commission requests public comment concerning the need for such criteria, the form of such criteria, and the criteria themselves.

Comments—Of the commenters that addressed this issue, most believe that quantitative indicators could not be used solely to evaluate effectiveness and that the determination of effectiveness was subjective. Further, the commenters believe that sufficient tools already existed in the form of SALP, QA assessments, regulatory inspections, monthly operating report data, and management reviews.

One commenter noted that effectiveness needs to be defined in terms of a particular objective. Another stated that performance goals such as the number of maintenance-related reactor trips, LERs, etc., should be established. One individual commented that effectiveness needs to focus on functional failures affecting public health and safety; another suggested goals associated with general plant safety performance measures.

Several commenters expressed concern that the lack of defined performance criteria could generate either complacency or a continuous ratchet since there would be no criteria for a "fully effective program."

Response—The Commission agrees that determination of effectiveness depends on many factors and that, with regard to programmatic features, it is

subjective. The rule provides flexibility for each licensee to decide how to structure a maintenance program and conduct maintenance to achieve established performance goals. Specifically, the rule addresses (1) the development of licensee-established goals for performance, (2) the use of goals and other quantitative and qualitative means as a measure of the effectiveness of maintenance programs, and (3) the use of monitoring and assessment of equipment performance or condition against goals, or, alternatively, the demonstration of preventive maintenance effectiveness.

In general, the Commission does not intend to define specific parameters or numerical criteria in either the rule or regulatory guide; each licensee is to establish appropriate goals to assist in monitoring the effectiveness of maintenance.

10. Are performance indicators that are being used by industry, may be used in the future, or have been used in the past, appropriate candidates as quantitative measures of maintenance effectiveness? The Commission is particularly interested in experience or analysis concerning indicators or the use of indicators of component reliability as maintenance performance indicators.

Comments—In addressing this item, NUMARC and most utilities stated that general plant performance indicators that have been developed and used by the industry were not appropriate for use as the sole maintenance-effectiveness indicators because of the number of nonmaintenance-related factors included in them. Many of the proposed maintenance indicators are process indicators, which may or may not accurately reflect the state of the overall maintenance program. Such indicators are useful, but only as one tool for management evaluation of the maintenance program.

Although stating that there are presently no performance indicators in use by the industry that directly measure performance, NUMARC and the utilities recognized that some of the current industry indicators, taken in the proper context, can provide an indication of maintenance performance. Indicators can be used effectively by a specific utility as a management tool to assess the trend of performance within a given indicator or set of indicators. However, NUMARC admonished that there are individual plant variations that make absolute comparisons misleading, even for plants with the same licensee. NUMARC also stated that the comparison of plant-specific indicators to industry averages can be misleading.

Two utilities stated that there was no need to develop new performance indicators. One added that the Commission should continue to evaluate a given licensee using its current technology. The other suggested that the existing INPO Performance Indicators be revised to meet the need for a maintenance standard.

NUMARC expressed the opinion that a good maintenance program would use a combination of indicators based upon the condition, type, age, etc., of the plant and specific equipment in question. NUMARC believes that prescribing a rigid set of indicators would not achieve necessary plant flexibility and may preclude focusing on areas of more appropriate concern. Flexibility is needed to revise, delete, or add performance indicators as appropriate to provide information to management to fit circumstances, methods, and conditions that may pertain to a given plant in a specific situation. In this vein, efforts to obtain consistent data would have questionable benefit for regulatory purposes and may have deleterious effects on plant programs.

Another utility does not believe that any prescribed set of indicators can be used to judge the effectiveness of a plant's maintenance program. It also stated that no indicator or combination of indicators can give an overall measure of maintenance effectiveness. In its view, such a task must be left to the judgment of the individual licensee, INPO, and the NRC.

One individual stated that maintenance effectiveness is a measure focused on economics. He went on to say that this view clouds the focus on public health and safety. According to this commenter, the proper focus of maintenance effectiveness is on functional failures that threaten public health and safety.

NUMARC warned that component reliability by itself is not a good indicator of maintenance performance. The reason given for this position was that component reliability may be an indicator of an application, design, component, operating, or maintenance problem. NUMARC added that assessments by the plant staff or by the corporate staff, including observation of work in the field, are necessary ingredients in the measurement of maintenance performance. NUMARC pointed out that a given component failure or degradation could be allowable based on engineering judgment without indicating an ineffective maintenance program, especially for cases involving redundant or nonsignificant equipment.

Response—The Commission agrees that plant performance indicators that have been developed and used by the NRC and industry are not appropriate as the sole indicators of maintenance effectiveness. The Commission also agrees that, because of individual plant variations, performance indicators are not appropriate for making absolute plant-to-plant comparisons. However, as recognized by commenters, indicators taken in context can be used as an indication of maintenance performance. More importantly, indicators can be used by licensees as an effective management tool to assess the need for corrective actions within a maintenance program.

Operating characteristics such as consistently high availability or low equipment-caused forced outage rates over a number of operating cycles are indicators of good maintenance effectiveness. However, the plant material condition can degrade significantly before these indicators provide identification of degraded maintenance effectiveness; thus these indicators are not very timely. Based on the results of extensive work on indicator development, the Commission concludes that indicators that are based upon actual in-service component reliability and failure history provide a useful measure of maintenance effectiveness. Also, these indicators can be defined and implemented independent of the definitions and procedures that the licensee deems necessary to manage the flow of maintenance work. Knowledge of data showing component failure in excess of the industry average has the desirable property of alerting licensees to determine whether improved maintenance performance is needed. In general, the Commission agrees with NUMARC that a good maintenance program would use a combination of indicators based upon the condition, type and age of the plant and the specific equipment in question. Accordingly, the Commission has modified the final rule to allow licensees flexibility to determine the details of their individual maintenance programs.

11. Should an industry-wide component failure reporting system, e.g., NPRDS, be used by all plants in order to support the sharing of generic maintenance experience and facilitate monitoring of maintenance effectiveness?

Comments—Of the commenters, including NUMARC, who addressed this item, most recognized the usefulness of the NPRDS as a source of generic failure data. However, most of the commenters,

including NUMARC, oppose the unqualified use of the NPRDS for monitoring maintenance effectiveness for a number of reasons. Some commenters, including NUMARC, perceive such use of the NPRDS as an inappropriate regulatory intrusion into a program designed to improve communications regarding equipment performance within the industry that would tend to stifle the free exchange of information. NUMARC cited the necessary expansion of the reportable scope of the NPRDS to cover the entire BOP as a tremendous undertaking that could be prohibitively expensive. NUMARC, two utilities, and one individual believe that, although the NPRDS can be used to obtain gross indications of a problem, its usefulness is restricted because of plant-to-plant differences in maintenance practices, component application, design, environment, and the detail with which failures are reported.

Response—The Commission generally agrees with the above comments. However, the NPRDS may provide useful information for comparing plant-specific experience on equipment with a broader range of industry operating experience on similar equipment. The data does provide useful insights into maintenance trends at an individual plant.

12. Commissioner Roberts had the following views:

I cannot join the majority in supporting the proposed rulemaking on maintenance. In order to have the benefit of the public's comments, it has been my custom to agree to publication of proposed rulemakings. I cannot do so in this instance. I have asked one fundamental question. What are we trying to accomplish with this rule that cannot more effectively and innovatively be accomplished without a regulation? I have not received a satisfactory answer. I do not believe the case has been made that licensees do not have established maintenance programs. Most importantly to me, there has been no demonstration that this rule would improve implementation of existing programs. Neither have I been provided with compelling documentation on what the problem is and how, specifically, this rule will fix it. On the contrary, the trends staff has provided show continued improvement in the maintenance area.

The proposed rule the Commission is now publishing fails to provide a basis for determining when a maintenance program is effective or when improvements are "appropriate." We are even delaying publication of the accompanying regulatory guide until the final rule. Without being afforded the opportunity to review this implementation document, the Commission is left in the position of approving a specious rule. It is no wonder that this rulemaking would elicit such widespread opposition. The public is being asked to comment on a rule of form but no substance. I believe it would be more productive to delay issuance of this proposed rule until the draft regulatory guide is available for comment. Only then can we receive meaningful comments on the rulemaking package.

I am concerned that this rule goes beyond our authority. I cannot agree with a rule that would have the NRC regulating maintenance on all systems, structures, and components regardless of whether they have a nexus to radiological safety or not. I am troubled by the attitude demonstrated when we request public comments on what limitations, if any, should be placed on the final rule to address structures, systems and components that are "*without question irrelevant* (my emphasis) to the protection of public health and safety." This clearly abdicates our responsibility to show that a regulation is needed. We must ask ourselves: Are we proceeding with this rulemaking for the sake of the rule itself? As attested to by the cases where the Commission cited licensees, the NRC already has the authority to enforce compliance in the maintenance area.

The arguments advanced by both the staff and the Commission in trying to comply with the requirements of the backfit rule have played a significant role in my decision not to support this proposed rulemaking. The staff argument for the rule's compliance with 50.109 has been made on the basis of cost. The staff states that the backfit analysis shows that "* * * the rule will provide a substantial increase in the protection of the public health and safety without any additional cost." I am skeptical of the assumptions made in the backfit and regulatory analysis and request comments on both these documents. I also request comments on the views of the ACRS. They state that "* * * there are characteristics of regulations, and especially the way in which they are typically enforced, that lead us to believe that, under a rule, a move toward uniformity would occur, and this is likely to decrease the effectiveness of some of the better existing programs." I share their concern that the existence of this rule could make things worse and diminish rather than enhance the protection of the public.

Regarding "adequate protection," the Commission appears to be saying that since effective maintenance is necessary to maintain adequate protection, this rule should be excepted under 50.109(a)(4). This exemption would prohibit staff from taking implementation costs into consideration. However, it would require that a documented evaluation be prepared for public comment. Therefore, my opposition to the exception is not to the exception itself but to the precedential nature of the use of the adequate protection argument. Let me state that I, too, strongly believe that effective maintenance is necessary to assure that nuclear power plants are safe and to provide adequate protection to the public. I also believe, just as strongly, that this rule is not necessary to provide that protection, and that as the ACRS noted, it may well have the opposite effect. I believe that we cannot afford to be careless about the use of the "adequate protection" argument for exception to the backfit rule. The Commission is in litigation about this very issue. The Commission addressed this point in detail under the heading "Adequate Protection" in the Response to Comments on the final 10 CFR part 50 Revision of Backfit Process for Power Reactors. Let us remember that there had been concerns that in dealing with the backfit rule, the Commission would use the phrase "adequate protection" arbitrarily. The Commission could unwittingly be giving credence to that view.

Additionally, it seems to me that the Commission position on adequate protection is internally inconsistent. The Commission needs to recognize that when it states that this rule is needed to maintain adequate protection, it is saying that the current operating plants now pose undue risk to the public which we are presently tolerating. If I believed that, I would suggest (as I'm sure would the rest of the Commission) that this rule become immediately effective. This is clearly not the case. As the Commission in the very same comment shows, "* * * the proposed rule codifies and standardizes *previously existing* (my emphasis) Commission requirements, both explicit and implicit, in plant technical specifications, licensee safety analysis reports, and 10 CFR part 50, appendix B." It seems to me that the Commission can't have it both ways.

I request comments on my views.

Comments—Of the commenters who responded to this question, most agreed with the views of Commissioner Roberts, while only three commenters disagreed with the Commissioner. Some commenters did not provide any basis for their agreement or disagreement. However, a number of commenters expressed concerns beyond the views expressed in Question 12. These are summarized below.

A majority of the utility commenters implicity agreed with Commissioner Roberts that the proposed rule went beyond the current authority of the Commission by requiring maintenance of all SSCs in the BOP. According to these commenters, since many SSCs in the BOP have no nexus to pubic health and safety, the maintenance rule would require licensees to spend their resources on unimportant areas, potentially decreasing the level of safety. One individual stated that regulators have a bias in favor of overboard regulations, pointing to the FAA's regulations on air transportation. This commenter noted that, unlike the scope of FAA's statutory charter which encompasses the development of the air transportation industry, the NRC's authority is limited to the regulation of the nuclear industry to protect public health and safety. Two utilities argued that the maintenance rule fails to provide meaningful definitions and standards of the activities required. In their view, this can lead to misinterpretation, arbitrary enforcement, and endless

reinterpretations of the rule. One utility suggested that any industry standard on maintenance would be tailored to the lowest common denominator, and therefore there would be no net improvement in the level of safety. It also argued that, once codified, a regulatory standard of acceptance maintenance would be difficult to improve. Finally, NUMARC and the utilities also repeated their general arguments why a maintenance rule is not necessary, in particular, on the gradual improvement in the industry maintenance performance, and the INPO Self-Assessment Program. NUMARC also asserted that the Commission has sufficient authority to ensure adequate protection.

A Commissioner on the Public Service Commission of the State of Vermont stated that there is safety significance in the BOP, pointing out that recent NRC staff and industry evaluations show that improper maintenance of components not previously associated with safety has resulted in adverse safety consequences. In addition, the Commissioner indicated that superior performance of nuclear plants internationally has been associated with maintenance programs that are stricter than those in the U.S., citing the experience of Japan and France.

Response—Two of the issues raised by Commissioner Roberts and by the majority of commenters are similar to those issues raised in response to Questions 6 and 7. As discussed in the response to comments on Question 6, the Commission agrees that a backfit analysis is required for the maintenance rule. Because the current regulations provide an assurance of adequate protection of the public health and safety, the Commission is no longer proposing to exempt the maintenance rule from the requirements of a backfit analysis.

The Commission does not agree that the maintenance rule will result in decreased safety by requiring licensees to divert their resources away from SSCs and activities with greater importance to safety. The maintenance rule is being issued to ensure that the effectiveness of maintenance programs is maintained for the life of the facility and is not expected to require significant modifications to current licensee programs. The regulatory guide will provide flexibility for a licensee to structure its maintenance program in accordance with the safety significance of those SSCs. However, the Commission does agree with the comments that not all SSCs in the BOP are related to the protection of public health and safety. Accordingly, as discussed in the response to the comments on Question 7, the scope of the rule has been modified to focus on those SSCs whose failure could most directly threaten public health and safety.

Finally, during the time the Commission held rulemaking in abeyance, the public had the opportunity to comment on the draft regulatory guide. Considering the narrowing of the focus of the final rule to a results/performance-oriented approach, the supporting regulatory guide will require revision. During the revision process, previous public comments will be considered and appropriately reflected in the regulatory guide. The regulatory guide will be revised to reflect the rule's narrower focus on results and maintenance program effectiveness, and will describe a means for meeting the requirements of 10 CFR 50.65 acceptable to the staff. Revision of the regulatory guide will again include the opportunity for public comment. Implementation of the rule is to be delayed for five years after the issuance date, with the regulatory guide expected to be available within the first two years. This schedule will allow at least three years for licensee development beyond the time when final guidance is expected to be available.

Additional Comments of Commissioner Curtiss

I believe that the approach adopted by the Commission in this final rule is sound and appropriate. The entire Commission agrees that it is important for this agency to have a regulatory framework in place that will provide a mechanism for evaluating the overall continuing effectiveness of licensees' maintenance programs. This final rule will provide that regulatory framework.

I strongly disagree with those who contend that the Commission rushed out with this maintenance rule without the benefit of public comment and with the attendant implication that the final rule was not well-considered. In point of fact, the reliability-based aspects of maintenance reflected in this final rule have been at the very heart of what the Commission has been considering in the maintenance area since as early as 1988. Indeed, it is abundantly clear from even a cursory review of the history of this issue that considerable time and attention have been devoted to the basic concepts reflected in this final rule. That history is briefly summarized below:

In the Final Commission Policy Statement on Maintenance of Nuclear Power Plants (53 FR 9430; March 23, 1988), the Commission made it clear that—

> [i]t is the objective of the Commission that all components, systems and structures of nuclear power plants be maintained so that plant equipment will perform its intended function when required. To accomplish this objective, each licensee should develop and implement a maintenance program which provides for the periodic evaluation, and prompt repair of plant components, systems and structures to ensure their availability * * *. [T]he program should include the feedback of specific results to ensure corrective actions, provisions for overall program evaluation, and the identification of possible component and system problems * * *.

An adequate program should consider

- Technology in the area of—Predictive Maintenance
- Equipment history and trending [and]
- Measures of overall program effectiveness

The Commission went on to indicate in that same 1988 Policy Statement that—

> The Commission expects to publish a Notice of Proposed Rulemaking in the near future that will establish basic requirements for plant maintenance programs. We believe that the contents and bounds of the proposed rule will fall within the general framework described in this Policy Statement * * *. We encourage interested parties to provide their views on this important subject to the Commission, even at this early stage of the rulemaking process.

53 FR 9430–31.

Thus, early on, the Commission began to consider the principal elements of the final rule adopted here by the Commission, called on licensees to incorporate those elements into their maintenance programs, and solicited public comment on such proposals.

In conjunction with the issuance of the Final Commission Policy Statement on Maintenance of Nuclear Power Plants, the Commission directed the NRC staff to develop a preferred maintenance rulemaking option requiring licensees to track certain maintenance performance indicators (See Staff Requirements Memorandum on COMKC–88–03, June 17, 1988). In response, the staff advised that the proposed rules should contain "provisions for performance assessment which licensees would implement to track the effectiveness of their maintenance programs" (See SECY–88–277, Amendment to 10 CFR part 50 Related to Maintenance of Nuclear Power Plants, p. 2, September 30, 1988). Although the staff was not in a position to suggest the use of specific

maintenance performance indicators, it formulated a proposed rule that—

emphasizes that an integral part of a good maintenance program is the monitoring and feedback of results. In this regard, the maintenance programs should utilize quantitative indicators that are based upon actual component reliability and failure history to provide the best measure of maintenance effectiveness.

SECY–88–289, Preliminary Results of the Trial Program on Maintenance Performance Indicators, p. 5, October 7, 1988.

Indeed, the staff specifically noted that the goal of the recommendations contained in the proposed maintenance rule was to provide the NRC staff and licensees "with a practical near-term method to track maintenance effectiveness * * *" (SECY–88–289, p. 5)—the very core of the proposal that the Commission endorses in this final rule.

The resulting Notice of Proposed Rulemaking on Maintenance and the proposed rule published for comment on November 28, 1988 (53 FR 47822) contain the same equipment history and trending, effectiveness monitoring, and feedback elements as the Final Commission Policy Statement on Maintenance. They also contain clear indications that the Commission intended to include requirements for monitoring, trending, and feedback with regard to the effectiveness of maintenance in any maintenance rules that might ultimately be adopted. The need for, and details of, such provisions were emphasized in the draft Regulatory Guide that was subsequently published for comment as part of this maintenance rulemaking effort. 54 FR 33983. In turn, a number of commenters acknowledged the maintenance effectiveness measurement, trending, and feedback aspects of the proposed rule and provided their views on these matters.

In sum, it is abundantly clear from all of this that the Commission has long been considering maintenance effectiveness monitoring of the sort that a majority of the Commission now adopts in this final maintenance rule, and that the industry and the public were given clear notice and the opportunity to comment on such considerations throughout this maintenance rulemaking process. The final rule that has resulted from this careful deliberation will provide the regulatory framework that all Commissioners agree this agency must have in order to ensure the continuing effectiveness of maintenance efforts at nuclear power plants, while at the same time providing licensees broad latitude in how they fashion their individual maintenance programs.

Commissioner Remick's Separate Comments

I respectfully differ with my colleagues inasmuch as I do not believe that there is a demonstrated need for a rule in light of significant improvements in maintenance programs resulting from Agency attention and licensee initiatives. The Commission indicates in its decision to promulgate this rule that "* * * the Commission is satisfied that the industry has been generally successful in bringing about substantial improvement in maintenance programs." Substantial improvements and favorable results are the goals that the Commission should strive for in its regulatory activities by utilizing the most effective regulatory tools for accomplishing those goals. As I argue below, I am not convinced that in this case a rule is the most effective regulatory tool for accomplishing those goals. Further, I differ inasmuch as I strongly believe that this rule should not be issued as a final rule. Although the rule is a concept worthy of discussion, it should not have been rushed out but should have been issued for the benefit of public comment.

The Commission approved criteria to be used in determining when industry progress in the area of maintenance would be sufficient to obviate a need for rulemaking (SECY memorandum from S. Chilk to J. Taylor, dated May 25, 1990). The staff performed a detailed evaluation of industry progress and concluded that the criteria had been satisfied (SECY–91–110, Staff Evaluation and Recommendation on Maintenance Rulemaking). Based upon its conclusions, the staff recommended that the Commission not proceed with a maintenance rulemaking. The ACRS agreed with the staff's recommendations. In general, I agree with the bases for the staff's conclusions. Therefore, I approved the staff's recommendation in SECY–91–110 not to proceed with maintenance rulemaking, but instead to issue a final policy statement on maintenance of nuclear power plants. I also approved the staff's recommendation to remove the maintenance escalation factor and revise the enforcement policy supplement of 10 CFR part 2, appendix C to include a specific maintenance-related example.

Further, I agree with the staff's conclusion that the industry document, INPO 90–008, "Maintenance Programs in the Nuclear Power Industry," delineates the necessary elements of effective maintenance programs. The industry's commitment to monitor the progress of maintenance implementation using the performance objectives of INPO 90–008, and the staff's intention to assess industry performance and report to the Commission after four years with an interim report after two years, are sufficient in my view to assure that there will be no backsliding of the level of industry performance of maintenance.

In general, I support a regulatory approach which stimulates licensees' and industry's initiatives, encourages innovation, permits self-management and produces positive results, under agency monitoring, in contrast to prescriptive, process-oriented regulations which require rote adherence, stifle initiatives and depend on punitive enforcement actions for compliance. There appears to be a near-unanimous consensus that the agency and the industry have stimulated initiatives which have produced positive results, an outcome not necessarily assured even by result-oriented rulemaking.

I agree with the view that routine use of the staff's maintenance inspection approach, utilizing the Maintenance Team Inspection (MTI) Criteria proposed in conjunction with the revised policy statement, could ultimately lead to essentially the same prescriptive result as a process-oriented rule. In the interest of ensuring that the responsibility for improving, sustaining and verifying adequate maintenance performance (using industry's standard document INPO 90–008) remained with the industry, I believe that the Commission should have directed the staff to develop an approach to its routine inspections which would have concentrated on inspecting for the effective results of maintenance programs rather than inspecting the details of the process. The MTI approach would then have been reserved for use as diagnostic inspection tool in those special cases where there was a perceived maintenance problem. In my approach, the staff's proposed final policy statement on maintenance would have been revised to include these future activities.

I agree with the view that it is important for this agency to have a regulatory framework in place that will provide a mechanism for evaluating the overall continuing effectiveness of the maintenance programs, particularly as the plants continue to age. I believe that a revised final policy statement, together with the development of results-oriented inspection programs, would have provided an effective regulatory framework for such evaluation. I believe that the performance-based rule that the majority of the Commission has approved has some innovative features, and may be particularly appropriate for monitoring the effectiveness of maintenance programs for the advanced reactors. However, I do not agree with the view that the proposed rule in no way interferes with the process-related activities which the licensee community, to its considerable credit, has undertaken voluntarily. It may be argued that licensees will not have to change their maintenance programs to meet the provisions of the rule as it is written. Nevertheless the focus of the NRC's attention on implementation of a new rule almost always carries with it the strong potential for impact on the licensees' initiatives and programs and thus an inherent disincentive to not innovate or participate in new initiatives.

One way of determining the potential impact of this rule would have been to issue it for public comment. I think that issuing the proposal for public comment would be good policy, and consistent with the Commission's Principles of Good Regulation, which state that all available facts and opinions be sought openly from licensees and other interested members of the public. To rush a final rulemaking package that contains some fundamental changes from the direction the

Commission has taken over the past several years, without seeking all available facts and opinions, is likely to lead to implementation problems that the Commission may not be aware of now.

The final rule represents a significant departure from the proposed rule. The proposed rule issued in 1988 focussed on what the **Federal Register** notice for the proposed rule called "maintenance practices" and "the adoption of common maintenance standards"—in a word, "processes", or "systems" of maintenance (53 FR 47824). The notice stated that "regulation [of maintenance] by outcomes rather than processes" would be the subject of "follow-on rulemaking" (id.). The final rule, however, is focussed on outcomes and thereby seems to have concluded the "follow-on rulemaking" before it was begun. Although the proposed rule contained monitoring and trending components, they were only a few among seventeen maintenance activities covered by the proposed rule (see the proposed 50.65(b)), and so clearly were in no way intended as a surrogate for a process-oriented rule. However, monitoring is the focus of the final rule. The significant shifts in the focus of the rule and in the role of monitoring in the rule deserved public comment.

The notice of the proposed rule invite responses to questions on monitoring, but the questions were confined largely to the issue of what specific measures might be used to assess the effectiveness of a maintenance program (see 53 FR 47825). Not addressed in the notice were certain matters which are crucial to the final rule. These include, for example, the final rule's requirement to monitor "against licensee-established goals" which are "commensurate with safety". Also, § 50.65(b) of the final rule defines the structures, systems, and components (SSCs) to be included in the scope of maintenance monitoring programs. This definition is both similar to and different from the definition of SSCs important to license renewal in part 54, a final rule which the Commission affirmed along with the final rule on maintenance. Public comment might have addressed whether the differences between the definitions of SSCs in these two maintenance-related rules are justified or will present interpretation and implementation problems.

If I were convinced that a rule was needed to produce positive results, I could support the majority's rule as a proposed rule, provided that I could see how the staff would implement the rule through the development of regulatory guides and inspection modules, and provided that the public was given an opportunity to comment before promulgation of a final rule. But I am not convinced that a rule is needed to produce positive results. The staff has shown that we're seeing substantial positive results of the industry's maintenance program initiatives, and the staff's findings have been verified in my discussions with Regional staff and Resident Inspectors. Therefore, I have concluded that the Commission should not change its direction now and that there is no need to promulgate a maintenance regulation which could be counterproductive to further maintenance program development and innovation. I fear that licensees will halt further development of their maintenance initiatives to await the development of the regulatory guidance to implement the rule, and that licensees will refrain from participating in future safety initiatives because they will interpret this Commission action as a significant retreat from its goals of achieving a stable regulatory environment. The development of an industry maintenance program standard, the industry's commitment to self-assessment against that standard, INPO's evaluation of maintenance progress against the objectives of the standard, NRC inspection programs which would concentrate on effective results, and the NRC's existing enforcement authority are adequate to ensure proper maintenance without a new rule.

I would stress, however, the importance of the Commission's continuing to monitor the industry's progress in this area. A policy statement would be a suitable approach for continuing the Commission's necessary emphasis on maintenance, and at the same time allowing for continuing improvement in maintenance through flexibility, diversity and innovation in the industry's programs.

Finding of No Significant Environmental Impact: Availability

The Commission has determined that, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

Since this action is directed toward maintaining the level of maintenance effectiveness of existing plant SSCs to minimize the likelihood of failures and events caused by the lack of effective maintenance and does not require any modification of the plant, it will not adversely affect the quality of the human environment.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

Single copies of the environmental assessment and finding of no significant impact are available from Robert Riggs, Office of Nuclear Regulatory Research, Telephone: (301) 492–3732, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information requirements will be submitted by the NRC to the Office of Management and Budget (OMB) for review and approval of the information requirements before they will become effective. Notice of NRC submission of the information collection requirements to OMB, and issuance of the required OMB approval, will be published by the NRC in the **Federal Register.**

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L St., NW., Washington, DC. Single copies of the analysis may be obtained from Robert Riggs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3732.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this regulation does not have a significant economic impact on a substantial number of small entities. This regulation affects licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. These licensees do not fall within the definition of small business set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR part 121.

Backfit Analysis

Pursuant to 10 CFR 50.109(a)(2), the Commission has prepared the following backfit analysis for the maintenance rule. The Commission has determined, on the basis of this analysis, that backfitting of the requirements in the maintenance rule will provide a substantial increase in the level of protection of public health and safety beyond that currently provided by the Commission's regulations, and that the costs of implementing the rule are justified in view of this increased protection.

The maintenance rule requires licensees to monitor the effectiveness of maintenance activities for certain structures, systems and components based upon licensee-established goals for performance or condition, and take corrective action where necessary (the requirements of the maintenance rule are set forth in greater detail in the discussion below which addresses the nine factors of 10 CFR 50.109(c)).

It is the Commission's judgement that maintenance, and in particular the goal-

setting, monitoring and corrective action activities required by the maintenance rule, provide a substantial increase in the safety of nuclear power plant operation. This judgement is based on the direct impact of maintenance on the reliability and operability of nuclear power plant safety systems, and its effect on the other plant structures, systems and components that are important to the protection of the public health and safety and common defense and security.

The Commission's judgement that effective maintenance is an important contributor to safety is confirmed by studies of maintenance practices for domestic nuclear power plants, LERs, composite data from the Commission's Systematic Assessment of Licensee Performance (SALP), and the Commission's inspections at domestic nuclear power plants, as well as studies of maintenance practices at foreign nuclear power plants, the military, and the aerospace industry. The Commission first began focusing on maintenance as a result of its observation that plant performance, as reflected in such indicators as the number of unanticipated scrams, was not improving in the early 1980s. The Commission had expected that as newly licensed power plants gained operating experience and took advantage of lessons learned and other information distributed throughout the industry, problems in plant operation would gradually decrease to a relatively low level. To understand why industry performance was not improving as expected, the Commission performed an assessment of maintenance at domestic nuclear power plants in NUREG–1212, "Status of Maintenance in the Nuclear Power Industry." The study found that in 1985, maintenance safety problems were evident to varying degrees across the U.S. nuclear industry. Wide variations were found in maintenance practices and effectiveness, and a significant proportion of operational problems was found to be attributable to improper or inadequate maintenance. This finding was confirmed by an industry study of maintenance conducted about the same time. This industry study, which was performed by NUMARC Working Group 4, was discussed by the Working Group Chairman during the July 1988 Public Workshop on the Maintenance Rulemaking (NUREG/CP–0099, pp. 1.21–1.31). The industry study found that 38% of the root causes of 650 significant events examined were maintenance related.

To obtain a broader perspective on maintenance, the Commission performed a survey and assessment of maintenance practices in other countries and industries to identify varying approaches to maintenance and to determine if there was any linkage between safety and effective maintenance. Specifically, the aim of the study (NUREG–1333) was to:

- Review various regulatory approaches and determine their applicability to the maintenance rulemaking, and
- Determine foreign and domestic maintenance practices that contribute significantly to effective maintenance.

The study covered Japanese, French, and German (FRG) nuclear maintenance regulations and practices; the Federal Aviation Administration's regulatory approach to the maintenance of U.S. commercial aircraft; and the maintenance programs of the U.S. Navy and Air Force. The results of the study were used in formulating the proposed rule. These studies confirm the Commission's view that good maintenance is correlated with high reliability and minimization of plant transients, and therefore with nuclear power reactor safety.

An additional concern of the Commission is the need to assure effective maintenance at nuclear power reactors throughout the terms of their operating licenses (and any renewed operating licenses). While the current performance of the nuclear power industry in the area of maintenance is acceptable and improving in the aggregate, the NRC Staff's Maintenance Team Inspections indicate that there are still common weaknesses in discrete areas of maintenance at nuclear power plants. Thus, while the Commission acknowledges the increased emphasis by licensees on maintenance and significant improvement in performance of maintenance programs in the aggregate, additional attention is warranted. Moreover, in the absence of a rule, there is no assurance that licensees would not relax their commitment to effective maintenance practices in the future. In this regard, the Commission notes that no licensee has made a formal docketed commitment to implement the Institute for Nuclear Power Operations (INPO) performance objectives and criteria on maintenance (INPO 90–008). By adopting a maintenance rule now, the Commission will have a regulatory basis for preventing licensee "backsliding" in the area of maintenance.

The absence of Commission maintenance requirements covering a broad scope of structures, systems and components also represents a safety concern because of the potential adverse effect on the ability of the Commission to take timely and effective regulatory action against licensees with poor maintenance practices. It is true that there are a number of existing Commission requirements that are directly or indirectly relevant to maintenance, including 10 CFR 50.34(a)(3)(i); 50.34(a)(7); 50.34(b)(6) (i), (ii), (iii) and (iv); 50.34(b)(9); 50.34(f)(1) (i), (ii), and (iii); 50.34(g); 50.34a(c); 50.36(a); 50.36(c) (2), (3), (5) and (7); 50.36a(a)(1); 50.49(b); 50.55a(g); part 50, appendix A, Criteria 1, 13, 18, 21, 32, 36, 37, 40, 43, 45, 46, 52, 53; part 50, appendix B. However, these requirements do not apply uniformly to all "safety-related" structures, systems and components, and only occasionally apply to structures, systems and components which could adversely affect the functioning of safety-related structures, systems and components. Any attempt on the part of the NRC to take regulatory action against a licensee with inadequate or poorly-implemented maintenance must be pursued on an individualized, case-by-case consideration of the adequacy of that licensee's maintenance practices and their effect on safety. This regulatory approach is costly in terms of agency resources. It also risks the possibility that the NRC will be unable to take timely enforcement action in the event of a finding of inadequate licensee performance in maintenance. By contrast, timely regulatory action could easily be taken if a licensee were found not to be implementing specific actions required by a rule which addresses maintenance. In sum, the Commission concludes that substantial safety benefits are to be achieved from adopting the final maintenance rule.

The Commission also concludes that the costs of implementing the maintenance rule at all nuclear power plants are justified in view of the safety benefits identified above. A regulatory analysis has been prepared to assist the Commission in determining the benefits and costs of implementing the maintenance rule through a quantitative approach. However, the quantitative estimates in the regulatory analysis have proved to contain varying degrees of uncertainty. Depending upon the specific assumptions used in the analysis, a broad range of values is possible for the estimated risk reduction attributable to the maintenance rule (the uncertainties and their effect on the overall risk reduction and value/impact ratios are discussed in greater detail in

the regulatory analysis). Because of these uncertainties, the Commission has considered qualitative safety considerations and benefits. Thus, the regulatory analysis' quantitative estimates comprise a component of, but are not the primary factor with respect to the Commission's conclusions on the safety benefits and costs attributable to the final maintenance rule.

The regulatory analysis estimates that implementation of the final maintenance rule could result in a point estimate of 52,000 person-rems avoided, with an upper bound of 72,000 and a lower bound of 7,300 person-rems. The net costs associated with implementation of the maintenance rule are estimated to entail a point estimate of 44 million dollars, with an upper bound of 2100 million dollars in cost savings and a lower bound of 1500 million dollars. The resulting value/impact ratio is a point estimate of 1200 person-rems/million dollars.

Furthermore, the regulatory analysis for the maintenance rule also contains some conservatisms which the Commission believes underestimates the cost-effectiveness of the final maintenance rule. In the regulatory analysis, it was assumed that the core-damage frequency and forced outage downtime reductions associated with the results-oriented rule would be the same as those for a process-oriented rule. However, the Commission believes that the results-oriented approach, by focusing to a greater extent on equipment performance, would be more likely to achieve additional reductions in core damage frequency and forced outage downtime. The regulatory analysis also assumed that licensees under the final results-oriented rule would incur most of the costs of implementing programmatic elements similar in scope to those contained in the 1988 proposed maintenance rule in addition to the costs of implementing the results-oriented elements which were drawn from the proposed maintenance rule and incorporated into the final rule. The Commission projects that because the results-oriented rule is not a prescriptive programmatic rule, licensees will achieve some cost savings because they will have flexibility in determining the manner in which to improve the programmatic elements of their maintenance programs. Accordingly, the Commission projects that the costs for the performance-based final maintenance rule will be somewhat smaller than that assumed in the regulatory analysis.

In view of the safety benefits discussed above, the Commission judges that the costs of implementing the maintenance rule are justified.

The Commission recognizes that regulatory action in the area of maintenance should not be overly prescriptive, but rather be carefully directed to ensuring that unnecessary activities are not required, in view of the large degree of uncertainty in quantifying the costs and benefits of the maintenance rule. Accordingly, the final maintenance rule is carefully tailored to eliminate prescriptive programmatic, procedural and organizational requirements. Rather, the final maintenance rule represents a results-oriented approach to assuring that maintenance is effectively conducted at nuclear power reactors.The licensee is responsible for establishing goals for structure, system and component performance or conditions, and the licensee is free to determine the monitoring method, the need for corrective action, and the nature of that action. Furthermore, the maintenance rule contains a provision (§ 50.65(a)(2)) whereby licensees may forego monitoring. The Commission believes that the final maintenance rule provides the necessary flexibility for licensees to tailor their maintenance programs to their specific plant design and configuration, organizational structure, and personnel, thereby permitting compliance with the maintenance rule in the most cost-effective manner. The Commission is confident that the regulatory goal of maintaining safety has been achieved in the most reasonable and cost-efficient manner and is consistent with the public interest.

For the reasons set forth above, the Commission concludes that, the maintenance rule will result in a level of safety beyond that currently provided by the Commission's regulations and that is a substantial increase in the overall protection of the public health and safety, and that the net costs of the rule are justified in view of this increased level of safety.

The nine factors listed in 10 CFR 50.109(c) are discussed below.

1. Statement of the specific objectives that the backfit is designed to achieve.

The purpose of the maintenance rule is to maintain the effectiveness of maintenance at operating nuclear power reactors, thereby maintaining the level of safety at operating nuclear power reactors.

2. General description of the activity required by the licensee or applicant in order to complete the backfit.

Under § 50.65(a)(1) of the maintenance rule, licensees will be required to: (i) Establish goals for the performance or condition of certain structures, systems and components to assure that they will meet their intended function, (ii) monitor these structures, systems and components to determine whether the licensee-established goals have been met, and (iii) take appropriate corrective action if the goals are not met. These goals are to be established by taking into account industry-wide operating experience. Monitoring is not required, however, where the licensee demonstrates that preventive maintenance is sufficient to assure that the structures, systems and components will remain capable of performing their intended functions. See § 50.65(a)(2). Licensees will be required to evaluate the effectiveness of their goal-setting, monitoring and corrective action activities on at least an annual basis, taking into account industry-wide operating experience, and adjust their programs where necessary to ensure that failure prevention is balanced against unavailability of structures, systems and components. See § 50.65(a)(3). In addition, when performing monitoring and preventive maintenance activities, an assessment of the total plant equipment out-of-service should be taken into account to determine the overall effect on performance of safety functions. See § 50.65(a)(3). The structures, systems and components which are subject to the goal-setting, monitoring, and corrective action requirements of the rule are those which are safety-related, and certain non-safety related systems, structures and components as defined in § 50.65(b).

3. Potential change in the risk to the public from the accidental offsite release of radioactive material.

According to the Regulatory Analysis for the maintenance rule, a point estimate of the potential risk reduction to the public is approximately 52,000 person-rem, with an upper bound of 72,000 person-rem and a lower bound of 7,300 person-rem. The bases of these projections are provided in the discussion in the Regulatory Analysis. However, as suggested by the range between the upper and lower bounds of risk reduction to the public, the estimates possess a certain relatively high degree of uncertainty. One factor contributing to this uncertainty, and which tends to suggest that the values for the results-oriented final rule are conservative, is that the core damage reduction frequency (CDF) and forced outage downtime reductions associated with the results-oriented rule are assumed to be the same as the process-

oriented rule. However, it is believed that the results-oriented rule, by focusing on equipment performance, would be more likely to achieve additional reductions in CDF and forced outage downtime.

4. Potential impact on radiological exposure of facility employees.

The goal-setting, monitoring, and availability evaluation requirements of the maintenance rule are not likely to result in any significant change, either positive or negative, in occupational exposures. Implementation of corrective actions, as required by § 50.65(a)(1) of the maintenance rule can affect collective occupational exposures both positively and negatively. Increases in maintenance activity due to expanded preventive maintenance or more aggressive corrective maintenance (to reduce backlogs, for example) will tend to increase exposure, while productivity increases and reductions in the amount of rework will tend to reduce exposures. The net effect of these positive and negative trends is believed to be beneficial but small compared to the other costs and benefits of improved maintenance. Because of the uncertainty in this projection and the relatively small magnitude of the reduced exposures, the cost-benefit analysis of the Regulatory Analysis does not account for any changes in occupational exposures.

5. Installation and continuing costs associated with backfit, including the cost of facility downtime or the cost of construction delay.

The Regulatory Analysis for the maintenance rule discusses the costs to the industry and the NRC associated with the maintenance rule. The maintenance rule does not require any change in the design or construction of any nuclear power plant. Nor does the rule apply to activities associated with the planning, design, and installation of plant modifications. Therefore, there will be no installation, downtime, or construction costs associated with the rule.

Rather, the maintenance rule will require licensees to establish goals for the performance or condition of certain structures, systems and components, monitor the performance or condition of those structures, systems and components, and implement corrective action if the licensee-established goals are not met. It also requires an annual evaluation of monitoring, goal-establishment and corrective action activities to take into account industry-wide operating experience and to make adjustments where necessary to balance failure reduction against structure, system, and component unavailability. For 110 operating reactors, the estimated net cost associated with implementation of this rule is $44 million. This estimate breaks down as follows:

Industry cost element	Millions of 1990 dollars
Implementation and operating	1050
Power replacement due to increased availability	(998)
Onsite cleanup and power replacement	(9)
Total industry cost	44

The above cost figures are point estimates with a relatively large degree of uncertainty. The cost estimates in parentheses represent cost savings.

6. The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements.

As discussed above, the maintenance rule does not require any design modifications. Therefore, safety impacts attributable to changes in plant design are not assumed to result from the maintenance rule. With regard to changes in operational complexity, maintenance is often considered a part of operations. The maintenance rule requires licensees to establish goals for the performance or condition of certain structures, systems and components, monitor the performance or condition of those structures, systems and components, and implement corrective action if the licensee-established goals are not met. It also requires an annual evaluation of monitoring, goal-establishment and corrective action activities. In addition, in performing monitoring and maintenance activities, the overall effect of equipment out-of-service on the performance of safety functions must be assessed. These maintenance activities should provide a significant enhancement in safety by contributing to reduced operational complexity as a result of fewer maintenance reworks, fewer unplanned transients, and higher reliability of safety-significant SSCs, thus reducing the need for operator actions in response to events. Thus, operational complexity is not likely to be adversely affected.

There are a number of existing Commission requirements directly or indirectly relevant to maintenance, including §§ 50.34(a)(3)(i); 50.34(a)(7); 50.34(b)(6) (i), (ii), (iii) and (iv); 50.34(b)(9); 50.34(f)(1) (i), (ii), and (iii); 50.34(g); 50.34a(c); 50.36(a); 50.36(c)(2), (3), (5) and (7); 50.36a(a)(1); 50.49(b); 50.55a(g); part 50, appendix A, criteria 1, 13, 18, 21, 32, 36, 37, 40, 43, 45, 46, 52, 53; part 50, appendix B. Licensees must continue to comply with these requirements. However, 10 CFR 50.65 should provide added assurance that these requirements will be complied with. No duplication of requirements is intended.

7. The estimated resource burden on the NRC associated with the backfit and the availability of such resources.

The estimated resource burden to the NRC associated with the maintenance rule can be divided into two elements: (a) Development of a regulatory guide on maintenance effectiveness monitoring ($800,000); and (b) inspection and enforcement to ensure compliance with the rule (assumed to be negligible over and above existing inspection efforts.)

With regard to enforcement, the maintenance rule does not require licensees to submit their maintenance program to the NRC for review and approval, and no agency resources have been included in the cost estimates for this activity. NRC does not expect to allocate any additional resources for inspections as a result of this rule.

8. The potential impact of difference in facility type, design, or age on the relevancy and practicality of the backfit.

The maintenance rule establishes generic requirements that are applicable to all types of facilities and designs regardless of their age. These requirements (and therefore the cost of complying with these requirements) are essentially the same regardless of the type or design of the facility.

9. Whether the backfit is interim or final and, if interim, the justification for imposing the backfit on an interim basis.

The maintenance rule is a final requirement. Licensees will have up to five years following publication of the final rule in the **Federal Register** to be in compliance with the requirements of the rule.

List of Subjects in 10 CFR Part 50

Administrative practice and procedure, Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Nuclear Regulatory Commission amends part 50 of title 10 of the Code of Federal Regulations as set forth.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.46 (a) and (b), 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10 (a)-(c), 50.34 (a) and (e), 50.44 (a)-(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a) (i), (i)(1), (1)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201 (i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)-(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 50.65 is added to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

(a) (1) Each holder of an operating license under §§ 50.21(b) or 50.22 shall monitor the performance or condition of structures, systems, or components, against licensee-established goals, in a manner sufficient to provide reasonable assurance that such structures, systems, and components, as defined in paragraph (b), are capable of fulfilling their intended functions. Such goals shall be established commensurate with safety and, where practical, take into account industry-wide operating experience. When the performance or condition of a structure, system, or component does not meet established goals, appropriate corrective action shall be taken.

(2) Monitoring as specified in paragraph (a)(1) of this section is not required where it has been demonstrated that the performance or condition of a structure, system, or component is being effectively controlled through the performance of appropriate preventive maintenance, such that the structure, system, or component remains capable of performing its intended function.

(3) Performance and condition monitoring activities and associated goals and preventive maintenance activities shall be evaluated at least annually, taking into account, where practical, industry-wide operating experience. Adjustments shall be made where necessary to ensure that the objective of preventing failures of structures, systems, and components through maintenance is appropriately balanced against the objective of minimizing unavailability of structures, systems, and components due to monitoring or preventive maintenance. In performing monitoring and preventive maintenance activities, an assessment of the total plant equipment that is out of service should be taken into account to determine the overall effect on performance of safety functions.

(b) The scope of the monitoring program specified in paragraph (a)(1) of this section shall include safety related and nonsafety related structures, systems, and components, as follows:

(1) Safety related structures, systems, or components that are relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, and the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the 10 CFR part 100 guidelines.

(2) Nonsafety related structures, systems, or components:

(i) That are relied upon to mitigate accidents or transients or are used in plant emergency operating procedures (EOPs); or

(ii) Whose failure could prevent safety-related structures, systems, and components from fulfilling their safety-related function; or

(iii) Whose failure could cause a reactor scram or actuation of a safety-related system.

(c) The requirements of this section shall be implemented by each licensee no later than July 10, 1996.

Dated at Rockville, Maryland, this 28th day of June, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-16322 Filed 7-9-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-73-AD; Amdt. 39-7054; AD 91-14-13]

Airworthiness Directives; Beech 33, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech 33, 35, and 36 series airplanes. This action requires initial and repetitive inspections for cracks in the wing front carry-through frame structure and repair or reinforcement if found cracked. Reports indicate that several of the affected airplanes have developed cracks in this structure. The actions specified by this AD are intended to prevent structural damage to the wing that could progress to the point of failure.

DATES: Effective August 12, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 1991.

ADDRESSES: Beech Service Bulletin No. 2360, dated November 1990, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 33, 35, and 36 series airplanes was published in

the **Federal Register** on March 14, 1991 (56 FR 10838). The action proposed initial and repetitive inspections of the wing front spar carry-through frame structure, and repair or reinforcement if found cracked, in accordance with the instructions in Beech Service Bulletin No. 2360, dated November 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter opposes the issuance of the AD because (1) the manufacturer does not state in Beech SB No. 2360, dated November 1990, that an AD has been requested; (2) the commenter has no knowledge of the discovery of cracks in the spar carry-through frame structure; (3) the AD does not take into account the differences in authorized maximum weight of the affected airplanes; (4) the commenter believes that the inspection specified in the maintenance manual is adequate; and (5) the proposed inspection appears to be an unjustified financial burden since the commenter is under the impression that part 135 operators are required to perform the actions of mandatory service bulletins and the commenter recommends that the requirements not be extended to part 91 operators.

The FAA disagrees with these remarks because (1) the FAA does not consider AD action only when a manufacturer requests and AD. AD actions are based upon known unsafe conditions; (2) the FAA has received reports of cracks in the spar carry-through frame structure on the affected airplanes and has evaluated all available information before proposing this AD action. The FAA recognizes that not every owner/operator has knowledge of these reports and information; (3) an evaluation of the reports of cracking that the FAA has received on the affected airplanes shows that the issue of authorized maximum weight differences is not a factor in this AD action; (4) the FAA has determined that the inspections specified in the maintenance manual are not sufficient for proper monitoring of cracking in the wing front carry-through frame structure; and (5) AD action is the only means the FAA has of assuring that all aircraft, regardless of how they are utilized, comply with a manufacturer's service bulletin.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 11,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, that total cost impact of the AD on U.S. operators is estimated to be $4,840,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-14-13 Beech: Amendment 39-7054; Docket No. 90-CE-73-AD.

Applicability: Applies to the following Models and serial numbered airplanes, certificated in any category.

Models	Serial Nos.
35-33, 35-A33, 35-B33, 35-C33, E33, F33, and G33.	CD-1 through CD-1304.
35-C33A, E33A, and F33A.	CE-1 through CE-1192.
E33C and F33C	CJ-1 through CJ 179.
H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B.	D-4866 through D-10403.
36 and A36	E-1 through E-2397.
A36TC and B36TC	EA-1 through EA-471.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent structural damage to the wing that could progress to the point of failure, accomplish the following:

(a) Upon the accumulation of 1,500 hours time-in-service (TIS), or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS, inspect the wing front spar carry-through frame (web) structure for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990.

(b) If cracks are found in the bend radius as a result of the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) For cracks up to 2.25 inches, prior to further flight, stop drill each crack at the crack ends. Only one stop-drilled crack on each side of the wing forward spar carry-through frame structure bend radius is allowable as long as neither exceeds 2.25 inches. If more than one crack is found on either side, prior to further flight, install Beech part number (P/N) 36-4004 Kit.

(2) For cracks between 2.25 and 4.0 inches, prior to further flight, stop drill each crack at the crack ends, and within the next 100 hours TIS, install Beech P/N 36-4004 Kit. Only one stop-drilled crack on each side of the wing forward spar carry-through frame structure bend radius is allowable as long as the crack does not exceed 2.25 inches. If more than one crack is found on either side, prior to further flight, install Beech P/N 36-4004 Kit.

(3) For cracks exceeding 4.0 inches, prior to further flight, install Beech P/N 36-4004 Kit.

(c) If cracks are found in the web face in the area of the huckbolt fasteners as a result of the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360, but do not stop drill the cracks because it is possible to damage the structure behind the web face:

(1) For cracks less than 1.0 inch in length, return the airplane to service as long as there is not more than one crack on each side. If more than one crack is found on either side, prior to further flight, install Beech P/N 36-4004 Kit.

(2) For cracks more than 1.0 inch in length, within the next 25 hours TIS, install Beech P/N 36-4004 Kit. Only one crack on each side is allowable. If more than one crack is found on either side, prior to further flight, install Beech P/N 36-4004 Kit.

(3) If a crack passes through two fasteners but is less than 0.5 inches beyond either fastener, within the next 25 hours TIS, install Beech P/N 36-4004 Kit. Only one crack on each side is allowable. If more than one crack is found on either side, prior to further flight, install Beech P/N 36-4004 Kit.

(4) If a crack passes through two fasteners but is more than 0.5 inches beyond either fastener, prior to further flight, install Beech P/N 36-4004 Kit.

(d) Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

(f) The inspections and possible modifications required by this AD shall be done in accordance with Beech Service Bulletin 2360, dated November 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC. This amendment becomes effective on August 12, 1991.

Issued in Kansas City, Missouri, on June 17, 1991.

J. Robert Ball,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-16346 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-146-AD; Amdt. 39-7073; AD 91-15-09]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Pratt & Whitney PW4000 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, powered by Pratt & Whitney PW4000 series engines which requires inspections, adjustments, and functional checks of the thrust reverser system. This amendment is prompted by an on-going accident investigation, from which it has been determined that, prior to the accident the airplane experienced an in-flight deployment of a thrust reverser. While the investigation has neither revealed the cause of that deployment nor determined that the deployment caused the accident, it has identified a number of possible discrepancies in the thrust reverser control system which, under certain scenarios, could contribute to such a deployment.

DATES: Effective July 10, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2683. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Investigation of a recent accident involving a Model 767 airplane has revealed that, prior to the accident, the airplane experienced an in-flight deployment of a thrust reverser. While, to date, the investigation has neither identified the cause of the deployment nor determined that the deployment caused the accident, an exhaustive review of the service history of the thrust reverser control system and detailed analysis of that system have identified a number of possible discrepancies which, under certain scenarios, could contribute to such a deployment.

The FAA has reviewed and approved Boeing Service Bulletin 767-78-0046, dated July 2, 1991, which describes procedures to be employed in performing functional tests and inspections of the thrust reverser control and indication system, and inspections of certain engine wiring.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspection and testing of the thrust reverser control and indication system, and repetitive inspections of certain engine wiring on all Boeing Model 767 airplanes powered by Pratt & Whitney PW4000 series engines, in accordance with the service bulletin previously described. The FAA considers that requiring performance of these precautionary tests and inspections is prudent to ensure continued operational safety of these airplanes. In addition, operators are required to submit a report of their initial inspection findings to the FAA.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking to address it.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-15-09 Boeing: Amendment 39-7073. Docket No. 91-NM-146-AD.

Applicability: Boeing Model 767 series airplanes, equipped with Pratt and Whitney PW4000 engines, line position 1 through 376, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure the integrity the fail safe features of the thrust reverser design, accomplish the following:

(a) Within 30 days of the effective date of this AD, perform all tests and inspections of the thrust reverser control and indication system, and of selected engine wiring, in accordance with Boeing Service Bulletin 767-78-0046, dated July 2, 1991.

(1) Except as provided by paragraph (a)(2) of this AD, repeat all tests and inspections, in accordance with the service bulletin at intervals not to exceed 3,000 flight hours.

(2) Repeat the check of the grounding wire for the thrust reverser directional control valve (DCV) in accordance with paragraph III.E. of the service bulletin at intervals not to exceed 1,500 flight hours, and whenever maintenance action is taken that would disturb the directional control valve grounding circuit.

(b) If any of the tests and/or inspections required by paragraph (a) of this AD cannot be successfully performed, or if those tests and/or inspections result in findings that are unacceptable, prior to further flight, deactivate the associated thrust reverser in accordance with section 78-31-1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991. The thrust reverser must remain deactivated until all tests and inspections required by paragraph (a) of this AD are successfully completed.

(c) Within 45 days after the effective date of this AD, submit a report of the results of the initial tests and inspections required by paragraph (a) of this AD, both positive and negative, to the FAA, Seattle Aircraft Certification Office, ANM-100S, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(f) The inspections and tests shall be done in accordance with Boeing Service Bulletin 767-78-0046, dated July 2, 1991. The deactivation procedures shall be done in accordance with section 78-31-1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991, which includes the following list of effective pages:

Page No.	Date
2-78-31-1.0	May 1, 1991.
2-78-31-1.1, 2-78-31-1.2, 2-78-31-1.3, 2-78-31-1.4, 2-78-31-1.6.	August 15, 1989.
2-78-31-1.5	June 29, 1990.
2-78-31-1.7, 2-78-31-1.8, 2-78-31-1.9.	December 14, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7073, AD 91-15-09) becomes effective July 10, 1991.

Issued in Renton, Washington, on July 3, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-16433 Filed 7-5-91; 3:50 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM83-56-001; Order No. 413-A]

Application for License, Permit, and Exemption From Licensing for Water Power Projects; Order of Rehearing

July 1, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; ordering on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing that with one exception rejects requests to modify the final rule adopted in this proceeding, governing hydropower procedural regulations. Necessary and appropriate changes in these regulations have been made in rulemakings conducted since the final rule in this proceeding was issued. As requested, the Commission is amending standard article 2 for exemptions to add the National Marine Fisheries Service as an agency empowered to set terms and conditions to protect fish and wildlife at exempt projects. This change codifies current practice.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER LEGAL INFORMATION CONTACT: Merrill Hathaway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208-0825.

FOR FURTHER TECHNICAL INFORMATION CONTACT: William Wakefield, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 810 1st Street, NE., Washington, DC 20426 (202) 219-2784.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission's Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

On March 20, 1985, the Federal Energy Regulatory Commission (Commission) issued Order No. 413,[1] adopting a final

[1] 50 FR 11,658 (March 25, 1985), 50 FR 23,947 (June 7, 1985); FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,632 (March 20, 1985).

rule amending the regulations governing applications for license, preliminary permit, and exemption from licensing for hydropower projects. The rulemaking clarified and revised many of the regulations governing hydropower applications, amended 18 CFR part 4 to reflect Commission decisions in the regulations, and reorganized sections of 18 CFR part 4 to incorporate the regulations governing exemption applications into subpart D.

Requests for rehearing were filed by the National Hydropower Association (NHA), Pacific Gas and Electric Company (PG&E), and jointly by the National Wildlife Federation, National Audubon Society and Friends of the Earth (collectively, Wildlife Federation).

NHA requests that § 4.38 be amended to allow applicants to complete studies of the impact of proposed hydropower facilities after the application is filed, to provide a dispute-resolution mechanism, and to specify that an applicant need only perform site-specific studies during consultation.

PG&E requests a number of changes in the regulations. It asks that (1) hydropower applicants be required to consult with affected licensees and utilities, (2) the regulations be clarified to make any change in the applicant a material amendment of the application, (3) specific standards for rejection of applications be furnished in the regulations, (4) the consultation requirements of § 4.38 be made consistent with Exhibit E requirements, and (5) the Commission delete the regulations allowing a municipal competitor one final opportunity to change its plans of development.[2]

Wildlife Federation requests that the regulations be amended to conform to the court's decision in *Tulalip Tribes of Washington* v. *FERC*, 732 F.2d 1451 (9th Cir. 1984), that held the Commission could not exempt from licensing, as natural water-feature projects, proposals to use diversion structures up to ten feet in height which do not retain more than two acre-feet of water. Wildlife Federation also objects to the standard articles for exemptions codified in the regulations, which fail to mention the National Marine Fisheries Service (NMFS) as an agency empowered to set mandatory terms and conditions for the protection of fishery resources.

Except as noted below, the Commission declines to make the changes requested. Since this final rule was adopted, the Commission has substantially revised its regulations concerning pre-filing consultation and the studies that must be conducted by an applicant. As NHA requested, the Commission adopted a mechanism to resolve disputes concerning the studies an applicant must conduct, and the Commission addressed at length the obligations of applicants to conduct studies to assess the impact of proposed hydropower facilities. The Commission is not persuaded that any of the regulatory changes sought by PG&E are appropriate. Since this final rule was adopted, the Commission has revised its regulations to ensure that they comply fully with the *Tulalip* decision. It is appropriate, however, to revise the standard articles for exemptions in the regulations to include NMFS as an agency empowered to set mandatory terms and conditions, in order to conform to the regulations to the Electric Consumers Protections Act of 1986 (ECPA).[3]

A. NHA Rehearing Request

NHA asks that the Commission make a number of changes in its regulations governing pre-filing consultation.[4]

NHA wants the Commission to reconsider the requirement that applicants perform studies of the impact of the proposed hydropower facilities prior to filing the application with the Commission. NHA submits that the applicant should have the option of completing these studies after the application is filed and while it is being processed by Commission staff.

The regulations adopted allow certain studies, such as those that can be conducted only after a proposed project is operating, to be conducted after an application is filed. Other studies, however, must be completed prior to filing an application in order for it to be complete and ready for processing by the Commission's staff. As stated in Order No. 413: [5]

> These include studies that concern the economic or technical feasibility of the project, that are necessary to determine the design or location of project features, that measure the impact of the project on important natural or cultural resources, or that analyze mitigative measures, or that are necessary to minimize the impact on a significant resource.

NHA has not demonstrated why the Commission should not require that an applicant complete such studies prior to filing an application. Contrary to NHA's general and unsupported claims, such a requirement does not in any way discourage competition among applicants or reduce the range of reasonable design options considered by the Commission. The Commission's further examination of this issue in Order Nos. 513 and 533 and experience since the final rule was adopted confirm that requiring an applicant to complete reasonable studies of its proposal prior to filing an application helps the Commission to process it expeditiously and avoids needless delay caused by inadequate consultation with affected resource agencies and incomplete information submitted to the Commission.[6]

However, in recognition of the length of time certain pre-filing studies could require, the Commission in Order No. 533 allows in certain cases the submittal of studies after filing the application but before issuance of a license or exemption, if through no fault of the applicant the study cannot be completed prior to filing. See §§ 4.38(c)(1)(ii), (c)(2) & (c)(3).

NHA asks that the Commission incorporate into the regulations a mechanism by which an applicant can resolve disputes with resource agencies over the need for the applicant to conduct a particular study. Since the final rule was adopted, the Commission has revised § 4.38 to provide a dispute-resolution mechanism, and § 16.8, applicable to applicants for new licenses, also contains such a mechanism.[7]

NHA urges the Commission to specify that any applicant need only perform site-specific studies during the pre-filing consultation period. NHA alleges that certain resource agencies have requested that applicants conduct cumulative impact studies (*e.g.*, studies of the impact of more than one project on fishery resources in a river basin) in order to obtain an exemption. NHA claims that such studies are not necessary and are not appropriate in light of the Commission's approach to the study of cumulative impacts.

This rulemaking, which focuses on a number of procedural issues concerning hydropower applications, is not the proper proceeding to address the question of when and how an applicant must study the cumulative impacts its proposal presents, when analyzed in

[2] On May 23, 1991, PG&E withdrew section II of its request for rehearing, dealing with other issues.

[3] Pub. L. No. 99-495, 100 Stat. 1243 (Oct. 16, 1986) (codified at 16 U.S.C. 791a *et seq.*).

[4] These regulations are set forth in § 4.38, originally adopted in Order No. 413 and substantially revised in the recent "10(j)" rulemaking, Order No. 533, 56 FR 23,108 (May 20, 1991), III FERC Stats. & Regs. ¶30,921 (May 8, 1991). The pre-filing consultation requirements for applicants for new licenses are set forth in § 16.8. Order No. 513, 54 FR 23,756 (June 2, 1989), III FERC Stats. & Regs. ¶30,854 (May 17, 1989).

[5] FERC Stats. & Regs., Regulations Preambles 1982-1985 at 31,272.

[6] See §§ 4.38(c)(1)(i), 16.8(c)(1)(i).

[7] Sections 4.38(b)(5), 16.8(b)(5).

conjunction with other projects. The Commission has long recognized its responsibilities to conduct a cumulative analysis of the impacts of hydropower proposals in appropriate circumstances, and applicants may have a responsibility in specific cases to lay the basis for this analysis in their studies.[8] NHA has not given any specific examples of problems in this area, nor does the record in this rulemaking otherwise address this issue. The Commission concludes, therefore, that it is best left for resolution in specific cases, when a resource agency requests that an applicant study a cumulative impact. If an applicant disagrees with such a request, it may refer the dispute to the Director of the Office of Hydropower Licensing (OHL) for resolution.[9]

B. PG&E Rehearing Request

PG&E asks that the regulations be amended to recognize the interests of existing licensees and electric utilities affected by proposed hydropower projects. PG&E recommends a number of changes in §§ 4.32, 4.36, 4.38, and 4.60 of the regulations. These changes would require applicants to notify every licensee that may be affected by a proposed project, including those licensees that may be entitled to headwater benefits payments. An applicant would be required to serve a copy of its application on all such licensees. During the pre-filing consultation period, PG&E would oblige potential applicants to consult with affected utilities (such as those with which the proposed projects may interconnect) and to conduct studies as requested by such utilities.

The Commission does not believe that these changes are necessary or appropriate. Since the final rule was adopted, the Commission has revised its filing and pre-filing consultation regulations.[10] They now require that a potential applicant for hydropower facilities publish notice of and conduct a public meeting on the hydropower proposal it is considering.[11] When a hydropower application is tendered to the Commission for filing, an applicant must publish a second notice to the public.[12] When an application is accepted for filing, the Commission publishes notice as required by section 4(e) of the Federal Power Act.[13] Applicants must also make certain information available to members of the public and must maintain a public file of their applications, as amended.[14] The Commission is confident that these regulatory requirements are sufficient to inform all members of the public of hydropower proposals, including licensees and utilities that may be affected. To the extent that study of interconnection issues under the Public Utility Regulatory Policies Act is appropriate,[15] it is a matter of general concern and lies beyond the bounds of the Commission's hydropower regulations.[16]

PG&E requests that the Commission clarify in the regulations when an amendment is required to include any changes in applicant identity. PG&E wants § 4.35(f)(4) amended to specify that any addition of new parties to an applicant should constitute a material amendment, suggesting that such an addition could otherwise unfairly improve an applicant's position versus a competing applicant.

This issue was discussed at length in the preamble to the final rule, and the Commission sees no reason to change its decision.[17] The NOPR proposed to define a change in the "identity" of an applicant that would be a material amendment under § 4.35 as a substitution of new applicants for all the original applicants. The reasoning was that a total substitution of applicants amounted to a transfer of the application. Commenters in the rulemaking generally favored this proposal, and no one except PG&E has asked for rehearing of it. PG&E has not shown how the rule as revised unfairly favors an application for which an applicant is added.[18] By contrast, deletion of a co-applicant could alter the competitive status of the application, as where an applicant composed of a municipality and a private developer drops the latter in an attempt to shed the applicant's "hybrid" status and gain a municipal preference. This would be a "change in the status of an applicant" that would constitute a material amendment under § 4.35.

PG&E asks that standards for rejecting applications be made more specific in the regulations, contending that § 4.32 is confusing and vague because it does not contain specific standards for determining when an application is deficient or patently deficient.

The Commission believes that § 4.32(e) adequately deals with the processing of deficient applications, providing that any application that "patently fails to substantially comply with the requirements of paragraphs (a), (b) and (c) of this section (4.32) and of § 4.38, or is for a project that is precluded by law," will be rejected as patently deficient. In the preamble to the final rule, the Commission discussed how it may classify an application as deficient or patently deficient,[19] and PG&E has neither shown how this explanation is inadequate nor presented standards of its own for inclusion in the regulations.[20] On further review, the

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[8] *E.g.*, Allegheny Electric Cooperative, *et al.*, 48 FERC ¶61,363 (September 27, 1989), order on rehearing, 51 FERC ¶61,268 (June 5, 1990), appeal filed, No. 90-1405 (DC Cir. August 3, 1990) (Commission conducted cumulative impact analysis of license applications for new hydropower facilities on river system, for which applicants were required to gather data).

[9] See also the 10(j) rulemaking, where the Commission discussed the question of appropriate study requests at length and stated:

The Commission does not expect applicants to conduct experimental research projects on behalf of resource agencies, to expand the boundaries of general scientific knowledge, or to repeat experiments that have already been conducted by others.

III FERC Stats. & Regs. at 31,959.

[10] *E.g.*, § 4.38(b)(5).

[11] Sections 4.38 (b)(2) and (g)(1), 16.8 (b)(2) and (i).

[12] Section 4.32(b)(6).

[13] Section 4.32(d)(2).

[14] Sections 4.32(b), 4.38(g)(2), 16.7, 16.8(i)(2).

[15] 16 U.S.C. 2601 *et seq.*

[16] PG&E has also suggested that § 4.33(b) be revised to prohibit accepting for filing any application that proposes to use any portion of (1) licensed facilities or (2) land or facilities that are authorized by law exclusively for Federal development. As explained in the final rule, the Commission will not accept for filing any application that proposes to use land or facilities reserved exclusively for Federal development, since such a project is "precluded by law," as provided in § 4.32(e)(2). A more specific prohibition of such an application is not required. Preamble to Final Rule, section XII.A., FERC Stats. & Regs., Regulations Preambles 1982-1985 at 31,284. Certain applications for hydropower facilities that may use portions of already licensed projects may be accepted for filing, as the licensee could consent to such use, the application could be amended to avoid such use, or further review by the Commission could demonstrate that the proposal would not impermissibly interfere with an already licensed project. On the other hand, if an application proposes a project that would clearly interfere with facilities already licensed or use land reserved exclusively for federal developers, the application should be considered patently deficient and dismissed as precluded by law pursuant to § 4.32(e)(2). The Commission is examining issues raised by potential conflicts between applications for license and already licensed projects in a Notice of Inquiry, Preferences at Relicensing of Units of Development, 56 FR 8,164 (February 27, 1991), IV FERC Stats. & Regs. ¶ 35,522 (February 20, 1991).

[17] Section X, FERC Stats. & Regs., Regulations Preambles 1982-1985 at 31,281-83.

[18] Indeed, if a permittee which has filed a license application adds a co-applicant, it loses the permittee preference. See, *e.g.*, Larry Pane, 24 FERC ¶ 61,326 (1982).

[19] Section XII.G, FERC Stats. & Regs., Regulations Preambles 1982-1985 at 31,286.

[20] By recommending in its request for rehearing that "specifics should be developed by the Commission Staff from their experience with numerous applications and then noticed for public comment," PG&E appears to concede that this issue is not ready for resolution on rehearing, but would require a further or supplementary rulemaking.

Commission concludes that the standards in the existing regulation are appropriate and that questions about how these standards may be applied to specific factual circumstances must be left for resolution in particular cases.

PG&E also recommends in this context a number of other changes in the regulations. PG&E wants to require the Director of OHL to complete his processing of an application (to determine whether it is accepted, deficient, or patently deficient) within 60 days of the filing date, to require that the public notice of an application include the "Township, Range, and Section of the Diversion and Powerhouse," and to require that an applicant furnish copies of the application to "interested parties." PG&E has not presented any reasons for making these changes, which the Commission concludes are unnecessary or inappropriate. It is not practical to establish a time limit for the preliminary processing of all applications, which may vary tremendously in their size, complexity, and completeness. When the Commission publishes notice of an application under section 4(e) of the FPA, it customarily includes the township, range, and section of the project, if available. The new public file and related requirements in the regulations, discussed above, make it unnecessary to revise the regulations to require an applicant to provide copies of its application to interested parties, who may obtain them from the Commission's files, from the applicant (on the payment of reasonable costs of reproduction), or from a public library or other public office located in the county where the proposed project is located.

PG&E requests that the pre-filing consultation requirements of § 4.38 be made consistent with the Exhibit E requirements. PG&E complains that in the first stage of pre-filing consultation, the applicant is required to provide too much information to resource agencies. In the second stage of consultation, PG&E objects to the requirement that the applicant furnish to resource agencies the results of all studies conducted. Finally, PG&E alleges an inconsistency between the information standards set forth in § 4.38 for the second stage of consultation and the standards for certain applications set forth in §§ 4.41 and 4.51.

The Commission has addressed these issues in its recent 10(j) and relicensing rulemakings, cited above, and is not convinced that there is any reason to make further changes in the regulations on rehearing in this proceeding.

As revised, in the first stage of pre-filing consultation § 4.38(b)(1) requires an applicant for an original license or exemption to be reasonably specific about what kind of hydropower project it is considering, where it is located, and what types of resource impacts could be anticipated. This information helps an applicant to focus its proposal when it is ready to proceed with the preparation of studies and materials for an application to the Commission, and helps to inform all concerned, including the Commission, resource agencies and Indian tribes, existing licensees such as PG&E, as well as members of the public, of what hydropower projects developers are actively pursuing. Similar information is required of applicants for new licenses under § 16.8(b)(1). This information also provides the basis for the public meeting which all applicants must conduct and for any studies that the agencies and Indian tribes may request of the applicant. PG&E has not demonstrated how or why the level of detail an applicant must provide at this stage of consultation is excessive.

The recent changes to the regulations have responded to PG&E's concerns about requiring applicants to provide all resource agencies with the results of all studies conducted by the applicant to evaluate resource impacts of the hydropower project proposed. If a particular agency is not affected by a specific study, as for example a fishery resource study and a historical preservation agency, under the current regulations an applicant need not furnish the results of that study to that agency. But whenever a study concerns a resource agency, as a fishery resource study and a fish and wildlife agency, it is essential that the applicant furnish a copy of that study to that agency in order to accomplish the objectives of the pre-filing consultation regulations.[21]

Contrary to PG&E's suggestion, there is no inconsistency between the information requirements of the pre-filing consultation regulations and the environmental exhibits described in the regulations. Section 4.38(c)(4), to which PG&E apparently objects,[22] specifies when certain studies must be completed by an applicant. In contrast, §§ 4.41(f) and 4.51(f) describe what are the required contents of the applicant's Environmental Report, exhibit E. All of these regulations are designed to be sufficiently flexible to encompass the many different kinds of facilities an applicant may apply for, yet provide helpful guidance to individual applicants. Questions of interpretation of these regulations will inevitably arise, and when they do, applicants are encouraged to contact OHL for assistance.

Finally, PG&E contends that the regulations provide a municipal competitor with a chance to change its proposed plans of development, in conflict with the FPA. PG&E wants the Commission to delete § 4.37(b)(4), which requires the Commission to inform an applicant who is a municipality or a state if its plans are not as well adapted under the FPA as a competing private developer and to afford the municipal or state applicant a reasonable period of time to make its plans at least as well adapted. This regulation is rooted in section 7(a) of the Act, pursuant to which the Commission must give preference to applications by municipal and state applicants in competitive situations. This section requires the Commission to allow such applicants a reasonable time to make their plans equally well adapted, and § 4.37(b)(4) implements this obligation.

C. Wildlife Federation Rehearing Request

The Wildlife Federation asks that the Commission exclude from the final rule all invalid provisions relating to natural water features. Wildlife Federation cites the *Tulalip* case, and contends that the Commission's response to that case, set forth in footnote 8 to the preamble,[23] is inadequate.

In that footnote, the Commission pledged to deal with the *Tulalip* case in a separate proceeding. The court had examined the Commission's regulations on natural water features, adopted in 1982 [24] and recodified but not changed in this rulemaking. The regulations were adopted pursuant to the Energy Security Act (ESA), which allows the Commission to exempt hydropower projects that, among other things, utilize "natural water features for the generation of electricity, without the need for any dam or impoundment * * *." [25] The regulations allowed projects with "diversion structures" to qualify for this exemption, so long as the structures were no more than ten feet in height and did not retain more than two

[21] Section 4.38(c)(4)(ii) requires an applicant to provide each resource agency and Indian tribe with "the results of all studies and information-gathering either requested by that resource agency or Indian tribe * * * or which pertain to resources of interest to that resource agency or Indian tribe * * *." Section 16.8(c)(4)(ii), applicable to applicants for new licenses, contains the same language.

[22] PG&E cited in its request § 4.38(b)(2), which has been brought forward, largely intact, into § 4.38(c)(1), as revised.

[23] FERC Stats. & Regs., Regulations Preambles 1982–1985 at 31,289.

[24] 47 FR 38,506, 38,512 (September 1, 1982).

[25] Section 408, 16 U.S.C. 2708(b).

acre-feet of water.[26] The court held that these regulations exceeded the Commission's authority under the ESA, since they would allow exemptions for projects that included diversion structures that were in fact dams.

After this final rule, the Commission considered these matters in a separate proceeding and, in Order No. 503, deleted from the regulations all sections that were contrary to the court's holding, concluding that it would determine on a case-by-case basis which types of projects qualified for a natural water features exemption.[27] There is no reason, therefore, to consider this matter further at this time.[28]

Wildlife Federation also objects to article 2 of the Commission's standard articles for exemptions.[29] The final rule eliminated NMFS as an agency listed in the articles as empowered to set mandatory terms and conditions for exempt projects, in order to protect fishery resources under NMFS' jurisdiction. Wildlife Federation cites in support of its objection the then-pending case of *The Steamboaters* v. *FERC*, 759 F.2d 1382 (9th Cir. 1985).

Shortly after this final rule was issued, the court sustained the Commission in its elimination of NMFS as an agency empowered to set mandatory terms and conditions for exempt projects.[30] In 1986, however, Congress reversed this result, and in section 7 of ECPA amended section 30(c) of the FPA to list NMFS as an agency empowered to set such terms and conditions. Accordingly, the Commission agrees with Wildlife Federation that it is appropriate to revise article 2 of the standard articles for exemption to list NMFS as having this authority. This regulatory change codifies the Commission's practice since 1986, which has been to add NMFS as an agency authorized to prescribe mandatory conditions for exempted projects in all orders approving exemptions.[31]

[26] Former §§ 4.30(b)(27) and 4.103(c)(2).

[27] 53 FR 36,562 (September 21, 1988), III FERC Stats. & Regs. ¶ 30,830 (September 15, 1988), rehearing denied, 45 FERC ¶ 61,414 (November 16, 1988).

[28] As recently as in an order issued on May 23, 1991, in Docket RM90-3-000, the Commission had occasion to revisit its disposition of the natural water feature issue, when it denied a petition for a rulemaking to define the term on a generic basis. See 55 FERC ¶ 61,267.

[29] Sections 4.94(b), applicable to exemptions for small conduit facilities, and 4.106(b), applicable to small power projects of 5 MW or less.

[30] 759 F.2d at 1388-89.

[31] *E.g.*, Alameda County Water District, 50 FERC ¶ 62,129 (1990) (conduit exemption); Utah Power & Light Co., 48 FERC ¶ 62,031 (1989) (5 MW exemption).

For the reasons discussed above, all requests for rehearing that are not specifically granted are denied. These revisions are effective July 1, 1991.

List of Subjects in 18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 4 of chapter I, title 18, Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r; 16 U.S.C. 2601–2645; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.94, paragraph (b) is revised to read as follows:

§ 4.94 Standard terms and conditions of exemption.

* * * * *

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service, the National Marine Fisheries Service, and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of exemption application.

* * * * *

3. In § 4.106, paragraph (b) is revised to read as follows:

§ 4.106 Standard terms and conditions of case-specific exemption from licensing.

* * * * *

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service, the National Marine Fisheries Service, and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of exemption application.

* * * * *

[FR Doc. 91-16324 Filed 7-9-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

Vocational Rehabilitation and Education

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: VA is correcting errors that appeared in **Federal Registers** 55 FR 28388, July 11, 1990, and 55 FR 20134 & 20135, May 2, 1991.

EFFECTIVE DATE: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Cliff Slay (202) 233-4251.

SUPPLEMENTARY INFORMATION: In 55 FR 28388, July 11, 1990, item 18, the instructions given for amending § 21.7140 redesignates paragraph (b) as paragraph (d), thereby establishing two paragraphs (d), as a paragraph (d) is already in the CFR. These instructions also added a paragraph (f), which is in content, a revision of the text in paragraph (d) of the CFR. This correction amends the instructions to redesignate paragraph (d) of the CFR, as a revised paragraph (f).

In FR 55 20134, May 2, 1991, item 11, adds text that is repetitious to § 21.7076, paragraph (b)(1). In addition, the absence of 5 asterisks after the added text could be misinterpreted as a complete revision to paragraph (b)(1). This correction will issue new instructions for item 11, eliminating the repetitious text, and will establish 5 asterisks to indicate that additional text follows.

In FR 55 20135, May 2, 1991, item 16, instructs that § 21.7137, paragraph (d)(3) be "revised to read as follows"; it should have read "added to read as follows." This correction will rewrite item 16 and include instructions to add paragraph (d)(3).

Dated: July 2, 1991.

B. Michael Berger,

Director, Records Management Service.

PART 21—[CORRECTED]

§ 21.7140 [Corrected]

1. The following corrections are made in 55 FR 28388, July 11, 1990. The words in item 18 which read, "In § 21.7140, paragraph (b) is redesignated as paragraph (d); paragraph (c) is redesignated as paragraph (e); paragraph (a) is revised; new paragraphs (b), (c), and (f) are added to read as follows:" are removed and replaced by the following revision:

"In § 21.7140, paragraph (d) is redesignated as paragraph (f) and is revised; Paragraph (b) is redesignated as paragraph (d); paragraph (c) is redesignated as paragraph (e); paragraph (a) is revised; new paragraphs (b) and (c) are added to read as follows:"

§ 21.7076 [Corrected]

2. The following corrections are made in FR 55 20134, May 2, 1991. The words in item 11 which read, "In § 21.7076 (b)(1) remove the words 'VA will make a charge against entitlement' and add in their place, the words 'Except for those pursuing correspondence training, cooperative training or apprenticeship or other on-job training, and those receiving tutorial assistance VA will make a charge against entitlement—(Nov. 18, 1988, Jan. 1, 1989)' " are removed and replaced by the following revision:

"In § 21.7076, paragraph (b)(1), remove the words 'Except for those pursuing correspondence training or apprenticeship or other on-job training, VA will make a charge against entitlement—' and add in their place 'Except for those pursuing correspondence training cooperative training, or apprenticeship or other on-job training, and those receiving tutorial assistance VA will make a charge against entitlement—(Nov. 18, 1988, Jan. 1, 1989)' "

* * * * *

§ 21.7137 [Corrected]

3. The following corrections are made in FR 55 20135, May 2, 1991. The words in item 16 which read, "In § 21.7137 paragraphs (a)(1), (d)(1) and (d)(3) are revised to read as follows:" are removed and replaced by the following revision:

"In § 21.7137, paragraphs (a)(1) and (d)(1) are revised; paragraph (d)(3) is added to read as follows:"

[FR Doc. 91-16630 Filed 7-9-91; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPO-96-F]

Medicare Program; Changes Concerning Interest Rates Charged on Overpayments and Underpayments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare regulations to provide for the assessment of the higher of the private consumer rate or the current value of funds rate of interest on overpayments and underpayments to health care providers and suppliers. This change is being made to protect the Government's interest, as provided by the rules of the Secretary of the Treasury applicable to charges for late payments. We are also making clarifying changes in the regulations.

DATES: Effective date: This final rule is effective August 9, 1991.

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FOR FURTHER INFORMATION CONTACT: Paul Krieger, (301) 966-7518.

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SUPPLEMENTARY INFORMATION:

I. General Background

On August 22, 1988, we published a notice of proposed rulemaking (proposed rule) in the **Federal Register** (53 FR 31888) to make changes to the Medicare regulations. We discussed several current provisions in 42 CFR parts 405 and 413 and set forth certain proposed changes that would—

- Eliminate the requirement that, in cases of overpayments to health care providers and suppliers, a determination that suspension of payment is needed to protect the program against financial loss be made prior to suspension of payment;
- Allow the assessment of the higher of the private consumer rate or the current value of funds rate of interest on overpayments and underpayments;
- Permit the pooling of grant, gift, and endowment funds for investment purposes; and
- Extend the list of exceptions to the interest expense reduction provision.

We also proposed several conforming and clarifying changes to the regulations text in §§ 405.370, 405.376(d), 413.5, and 413.153(b)(2).

In order to expedite the changes to the regulations that pertain to the assessment of interest charges on overpayments and underpayments, we have separated these sections from the others listed above and are proceeding with them in this final rule. The remaining sections will be included in a separate final rule entitled "Changes Concerning Suspension of Medicare Payments, and Determinations of Allowable Interest Expense." In § 405.376, the terms "provider" and "supplier" have the meanings stated in § 400.202; these definitions include health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs), to the extent that payment is made pursuant to the rules in part 417. The regulations text has been changed to clarify that application.

In response to the provisions of the proposed rule regarding proposed changes to interest rates charged on overpayments and underpayments, we received seven items of correspondence. Two commenters supported all the proposed changes. Specific contents of the proposed rule, the public comments, and our responses to the public comments are discussed below.

II. Statutory Provisions

Section 117 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), which added sections 1815(d) and 1833(j) to the Act, gave the

Secretary statutory authority to assess interest charges on delinquent Medicare overpayments or underpayments.

These provisions of the law require that once a final determination is made that a provider or supplier of services has received an overpayment or underpayment from Medicare and payment of the excess or deficit is not made within 30 days of the date of the final determination, interest charges will be applied to the balance due to or from the provider or supplier. These sections provide, that "* * * interest shall accrue on the balance of such excess or deficit * * * at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments." Prior to the passage of Public Law 97-248, HCFA had relied on common law authority to charge interest on these overpayments.

The regulations implementing these provisions were originally published in the **Federal Register** on December 6, 1982 (47 FR 54814). Section 405.376 specifies the rules for assessing and paying interest on Medicare overpayments and underpayments. Section 405.376(d) states that the interest rate on overpayments and underpayments is the prevailing interest rate specified in Treasury bulletins issued under section 8020.20 of the Treasury Fiscal Requirements Manual (now section 8025.40 of the Treasury Financial Manual). We adopted this rate, known as the current value of funds (CVF) rate, in the December 6, 1982 final rule because at that time it was the only rate falling within the statutory language.

Since we implemented the provisions of § 405.376, the CVF rate has consistently been lower than the prime rate or any other commercial lending rate. Since most providers and suppliers have to borrow funds at the market rate or higher, there is little incentive under our current regulations to refund any Medicare overpayment since they can retain program funds at the much lower CVF rate of interest. The result is that the Medicare program provides a below-market rate loan to these providers and suppliers.

Also, the CVF rate changes only when the annual average investment rate of the Treasury loan account fluctuates by more than two percent. This reduces responsiveness to the marketplace. For example, since October 1983, HCFA has not been able to charge more than nine percent per annum on outstanding overpayments. The nine percent rate remained in effect through December 1985. For the calendar years 1986, 1987, 1988, 1989, and 1990, the CVF rate was eight, seven, six, seven, and nine percent, respectively. For calendar year 1991, the CVF rate is eight percent.

Subsequent to the passage of the Debt Collection Act of 1982 (Pub. L. 97-365), the Federal Claims Collection Standards were modified. In addition to the CVF rate, "(a)n agency may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States" (4 CFR 102.13(c)). Also, the Secretary of the Treasury revised the section of the Treasury Financial Manual governing charges for late payments (1 TFM 6-8025.40). In addition to specifying the CVF rate as the minimum rate to be charged, that section now provides that "(a) higher rate of interest may be assessed if it is determined that a higher rate is necessary to protect the interest of the U.S. Government."

In response to these changes, on January 5, 1987, the Department adopted, in its claims collection regulations at 45 CFR 30.13, the private consumer rate (PCR) as a generally applicable necessary higher rate to protect the Government's interests in the case of debts owed to the Department (52 FR 260). The PCR is certified by the Secretary of the Treasury, and may be revised quarterly. The Department publishes notices in the **Federal Register** regarding this rate whenever it is updated by the Secretary of the Treasury. As of September 30, 1990, the PCR was 15.50 percent.

The Department regulation authorizes HCFA to assess the higher of the PCR or the CVF rate on delinquent overpayments in contexts outside the scope of § 405.376. Under § 405.376, however, the CVF rate is explicitly referenced as the only applicable rate. The CVF rate is currently eight percent. As explained above, charging a rate higher than the CVF rate is plainly necessary to protect Medicare's interests.

III. Proposed Changes Concerning Interest Provisions

We proposed amending § 405.376(d) to authorize applying the higher of the PCR or the CVF rate on overpayments and underpayments to providers and suppliers under the Medicare programs. We stated that we believed that the PCR satisfied the provisions of sections 1815(d) and 1833(j) of the Act because it was determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments. The PCR is certified and updated by the Secretary of the Treasury to the Department and is applied by the Department in its Federal Claims Collection Regulations at 45 CFR 30.13(a). In this context, the Department publishes the rate in the **Federal Register** when it is updated by the Secretary of the Treasury. Thus, the PCR is consistent with the Departmental rules.

In accordance with the Treasury Financial Manual (1 TFM 6-8025.40) and the Federal Claims Collection Standards (4 CFR 102.13(c)), we explained that the use of the PCR was necessary to protect the interests of the Medicare program. We stated that assessing interest at the higher of the two rates should reduce the time providers and suppliers are taking to repay overpayments. We also reflected that it should decrease the number of repayment schedules and the number of delinquent cost reports by eliminating the financial advantage that providers and suppliers currently enjoy by not paying promptly. This should reduce the administrative costs associated with collecting overpayments as well as the risk of nonpayment in instances where the provider or supplier undergoes subsequent financial difficulty.

We also proposed to revise the regulations to indicate the change in the citation of section 8020.20 of the Treasury Fiscal Requirements Manual to section 8025.40 of the Treasury Financial Manual.

IV Discussion of Comments

We received seven comments on the proposed changes to interest rates charged on overpayments and underpayments. We received comments from three health care facilities and health care associations, one Medicare contractor, two law firms, and one accounting firm. The commenters were concerned with the inconsistent approach to charging interest on overpayments and paying interest on underpayments; the difference in the proposed interest rate and the rate paid by carriers for late claim payments; the lack of evidence showing a need for an interest rate change; and the effect on interest payment of reversals and appeals.

Comment: Three commenters stated that in those cases where an overpayment has been reversed on appeal, no interest has been paid to the provider or supplier for the period during which the appeal was in process. The commenters believe that the providers and suppliers should receive interest payments on monies withheld by HCFA for an overpayment that is later determined not to exist.

Response: As stated in the proposed rule, if findings are reversed or changed upon administrative or judicial review,

any interest erroneously collected will be refunded to the provider or supplier. However, HCFA can only pay interest or otherwise disburse funds when the payment is authorized by law. We are not authorized to pay interest on collected amounts that are later paid to the provider or supplier when a determination is made that an overpayment does not exist. As provided by section 1815(d) and 1833(j) of the Act, we will pay interest if the provider or supplier is not paid in full within 30 days of the determination that money is due the provider or supplier. Consequently, interest payments on monies withheld would not begin until 30 days after the determination of an erroneous collection is made.

Comment: One commenter stated that the same interest rate should be assessed against carriers for late claim payments made to suppliers as HCFA charges against overpayments.

Response: HCFA issues amendments to regulations in accordance with the language and intent of the law. In this case, two separate provisions of the Act mandate different interest rates. The rate of interest paid by carriers for late claim payments is determined in accordance with section 1842(c)(2)(C) of the Act (and by intermediaries in accordance with section 1816(c)(2)(C) of the Act). These sections provide for the payment of interest if clean claims are not paid within the applicable number of days as defined within these sections. The rate of interest to be paid is specifically prescribed by section 3902(a) of title 31 U.S.C., which states that interest shall be computed at the rate the Secretary of the Treasury establishes for interest payments under section 12 of the Contract Disputes Act of 1978. In contrast, interest rates relating to provider, physician, and supplier overpayments and underpayments are determined in accordance with section 1815(d) and 1833(j) of the Act, the provisions of which are described in detail above.

Comment: One commenter stated that the proposed change to higher interest rates will encourage intermediaries to issue a Notice of Amount of Program Reimbursement (NPR) as soon as possible in order to begin the 30-day waiting period that must pass before interest is assessed. The Commenter believes that intermediaries will become more cursory in their review of cost reports and more aggressive in making cost disallowances.

Response: We believe that neither the intermediary nor HCFA has anything to gain by issuing hasty or incorrect NPRs. Any obviously wrong or intended errors merely cause additional work and the imposition of administrative costs for both parties. Therefore, higher interest rates should not result in the actions feared by the commenter.

Comment: One commenter stated that providers are reluctant to borrow funds to repay an overpayment since the interest paid on the borrowed funds is not recaptured if the determination is reversed.

Response: On the contrary, in the case of an administrative or judicial reversal, interest paid on funds borrowed to repay an overpayment is an allowable interest expense cost under § 413.153(a)(2) of the regulations. The commenter is correct, however, in the context of noncapital related borrowing for hospitals paid under the prospective payment system. While 100 percent of the interest would not be recaptured upon reversal, a portion would be reimbursable through part B inpatient ancillary and outpatient services upon the reopening of the cost report. The providers affected would be the short term acute care hospitals which are the most financially stable and represent less than one-third of the total Medicare providers. In addition, interest expense incurred to borrow working capital and other operational funds is considered to be included in the DRG payments. The comment is not accepted.

Comment: One commenter stated that HCFA has not proved that the disparity in interest rates is responsible for delays in payment nor has it presented any evidence of significant problems with late payments.

Response: Under the Federal Claims Collection Standards, each Federal agency is required to take aggressive action on a timely basis to collect all claims. It is HCFA's responsibility, therefore, to attempt recovery of overpayments in as short a time as possible. A review of provider overpayments for the 2-year period ending December 31, 1988 shows that more than 35 percent of the outstanding balances were more than 90 days old. Since interest accrues after only 30 days, it is apparent that adoption of the PCR is needed to reduce the delays in overpayment collections. We do not believe that the CVF rate now being charged encourages prompt repayment by providers and suppliers. We would be remiss in our duty to protect the Medicare trust fund if we do not adjust our interest rate to conform with the provisions allowed by the law.

Comment: One commenter stated that although underpayments due to providers and suppliers are not paid until after desk review or settlement, overpayments that are reflected on the cost reports are payable when the report is filed. The commenter questions why payment of underpayments, due to providers and suppliers, is not made immediately.

Response: A cost report showing an underpayment is a claim for funds against the government and cannot be paid until the claim is verified. On the other hand, a cost report showing an overpayment is a statement by the provider that it has been overpaid. Based on that statement, payment should accompany the report. With respect to the underpayment, existing regulations at § 413.64(f)(2) require the intermediary to make a retroactive settlement as soon as possible after the cost report is received. In either case, the amount of the debt must be established before it becomes due and payable.

Comment: One commenter questioned whether different interest rates apply when what initially was determined to be an overpayment is later determined to be an underpayment.

Response: The interest rate applied is dependent upon the time at which the overpayment or underpayment determination is made. The rate on a subsequent determination that there is an underpayment or reversal of an overpayment may be higher or lower than the rate at the time of the initial overpayment determination. For both underpayments and overpayments, we apply the interest rate in effect at the time of the determination, a rate over which we have no control. It is possible, therefore, that a provider or supplier will be required to pay a higher rate of interest on an overpayment made to HCFA than HCFA may be required to pay to the provider or supplier when the overpayment determination is later reversed. Of course, it is equally possible that the reverse will happen; that is, HCFA will be required to pay a higher rate of interest to the provider or supplier than the provider or supplier paid to HCFA. We wish to emphasize, however, that no interest is payable until 30 days have passed since the determination.

Comment: One commenter stated that interest was not paid by the intermediary after an initial determination of an overpayment was later reversed.

Response: Once the intermediary determines that an underpayment exists and so notifies the provider or supplier, payment must be made by the intermediary within 30 days from the determination date or interest must be paid. Appropriate adjustments will be made with respect to the overpayment

or underpayment and the amount of interest charged.

Comment: One commenter complained that providers receive no interest on a periodic interim payment (PIP) that is temporarily withheld by the intermediary.

Response: We assume that the commenter is referring to PIP payments that are late due to an interim rate adjustment required under § 413.64(h). Interim payments to providers are based on provider cost estimates and are normally adjusted during the period due to changes in utilization or other factors. Thus, interim rate adjustments are made during the cost reporting period in order to equate Medicare payment with the provider's expected reimbursable cost.

Interest is charged or paid only on an overpayment or underpayment that results from a final determination. The definition of a final determination is based on the premise that the decision made is a result of the cost report settlement process, such as a desk review, initial retroactive adjustment, or final audit. A debt must be established before it becomes due and payable and thus subject to interest. HCFA has always considered interim rate adjustments to be adjustments based on estimated amounts due to or from the provider and therefore not a final determination or the basis for the charging or paying of interest. Interim rate adjustments are not made to recoup overpayments. They are made so that payments during the year should equal as nearly as possible what the provider is due according to its cost report.

Comment: One commenter suggested that interest on an underpayment due a provider or supplier should be paid from the issuance date of the NPR to the date the check is received by the provider or supplier.

Response: Since interest due on an overpayment is not charged if the overpayment is liquidated within 30 days of the NPR issuance date, the intermediary need not pay interest if it pays the underpayment within the same time frame. If we were to revise the procedure as the commenter suggests, we would be obligated to make the same change to the overpayment procedure. Moreover, sections 1815(d) and 1833(j) of the Act establish the applicable 30 day period, which HCFA does not have the authority to change.

Comment: One commenter believes that no collection of overpayments should take place until the appeals process has been exhausted.

Response: Current regulations at § 405.1803(c) state that the issuance of an NPR constitutes a basis for recovery of any overpayment notwithstanding any request for an appeal. Comments and suggestions pertaining to settlement of cost reports and appeals procedures are not within the scope of this final rule. In addition, the Federal Claims Collection Standards require prompt and aggressive collection of debts owed to the Government, and sections 1815(d) and 1833(j) of the Act implicitly suggest that collection within 30 days is appropriate.

V. Technical Changes

After publication of the proposed rule, we became aware of a lack of clarity in the regulations regarding their application to overpayments and underpayments incurred by health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs). Common law allows the charging of interest on obligations not repaid timely. Section 1876 of the Act, which sets forth the statutory provisions regarding HMOs and CMPs, does not specify how interest is to be charged on Medicare program payments to these plans. However, section 1876(a)(5) of the Act states that payments to these plans are made from the Medicare part A and part B trust funds, and implicitly reflects an intention to integrate the debt collection policies which govern payments out of the trust funds. For some years, we have applied the provisions of § 405.376 to obligations due from or to HMOs, CMPs, and HCPPs, but we never amended the regulations text to include the appropriate references. Accordingly, we are making conforming changes to the regulations to reflect existing fiscal practices and to ensure uniformity of treatment for all Medicare expenditures as the law permits.

We are revising § 405.376 (a) and (c)(1)(i) to clarify the regulations' application to HMOs, CMPs, and HCPPs. In the context of cost-based contracts, we are clarifying the regulations authority for charging interest based on the final quarter report of HMOs and CMPs. Section 405.376(c)(1)(ii) states that "a written determination that an overpayment exists" is considered a "final determination" under sections 1815 and 1833 of the Act. Since a final quarter report satisfies this requirement, we are adding the appropriate cross-references pertaining to final quarter cost settlements for HMOs and CMPs and tentative cost report settlements of HCPPs in a new § 405.376(c)(1)(iii), and renumbering the subsequent paragraphs.

In reviewing the proposed rule, we also became aware of the need to clarify the definition in § 405.376(c) of "final determination" with respect to an ALJ decision that reduces an overpayment below an amount already collected. Prior to changes made in this final rule, the regulations did not make it clear that the ALJ decision is a final determination within the meaning of § 405.376(c)(1)(ii)(B). We have revised the language of that section to make this policy clear.

In addition, we believe that we need to clarify the applicability of § 405.376(h)(1) for those cases in which the provider seeks judicial review. Prior to this final rule, the regulations made it appear that interest is payable to a provider during the 180-day period prior to application of the interest provisions in section 1878(f)(2) of the Act (which deals with prejudgment interest of judicial claims). However, the second sentence of § 405.376(h)(1) does not create an obligation to pay interest during the 180-day period; rather, it clarifies that interest accrues despite the fact that an appeal has been filed. Interest is not recoverable against the government unless specifically provided for by statute or contract. Congress, in enacting section 1878(f)(2) of the Act, expressly determined the period during which interest is payable under § 413.64(j), that is "beginning on the first day of the first month beginning after the 180-day period", and thereby excluded the 180-day period itself. The definition of final determination in § 405.376(c) applies to administrative, not judicial, determinations; therefore, there is no interest obligation under these regulations for judicial determinations. To clarify the application of interest in these cases, we are revising § 405.376(h)(1). In addition, the cross-reference to § 405.64(j) in § 405.376(h)(1) is corrected to read "§ 413.64(j)".

VI. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, the final rule will be likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the

Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule will not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers, practitioners, and suppliers as small entities.

Our decision to revise § 405.376(d) to allow the option of assessing whichever interest rate is higher on Medicare overpayments will increase program savings and have an adverse effect on providers and suppliers when the rates are first implemented. However, we expect these savings to be offset by a reduction in the number of providers and suppliers delinquent in repayments. Since there are a minimal number of underpayments that are not paid timely to the provider or supplier, we expect that payment of a higher interest rate by the Medicare program will result in little or no economic effect.

In addition to the changes previously discussed in the notice of proposed rulemaking, we have added the clarification that § 405.376 concerning interest charges on overpayments and underpayments relates to HMOs, CMPs and HCPPs.

We do not anticipate any economic effects resulting from these provisions since they merely clarify already existing policy.

For the reasons set forth above, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this final regulation will not have a significant impact on the operations of a substantial number of small rural hospitals.

VII. Other Required Information

A. Paperwork Reduction Act

This final rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501.3111).

B. List of Subjects in 42 CFR part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR chapter IV is amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAM

Part 405, subpart C is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Recovery of Overpayments and Suspension of Payment

1. The authority citation for subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1885, of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395vv) and 31 U.S.C. 3711.

2. In § 405.376, the heading of the section and paragraphs (a), (c), (d), (h)(1), and (i), are revised to read as follows:

§ 405.376 Interest charges on overpayment and underpayments to providers, suppliers, and other entities.

(a) *Basis and purpose.* This section, which implements sections 1815(d) and 1833(j) of the common law and Act, and authority granted under the Federal Claims Collection Act, provides for the charging and payment of interest on overpayments and underpayments to Medicare providers, suppliers, HMOs, competitive medical plans (CMPs), and health care prepayment plans (HCPPs).

* * * * *

(c) *Definition of final determination.* (1) For purposes of this section, any of the following constitutes a final determination:

(i) A Notice of Amount of Program Reimbursement (NPR) is issued, as discussed in §§ 405.1803, 417.576, and 417.810, and either—

(A) A written demand for payment is made; or

(B) A written determination of an underpayment is made by the intermediary after a cost report is filed.

(ii) In cases in which an NPR is not used as a notice of determination (that is, primarily under part B), one of the following determinations is issued—

(A) A written determination that an overpayment exists and a written demand for payment;

(B) A written determination of an underpayment; or

(C) An Administrative Law Judge (ALJ) decision that reduces the amount of an overpayment below the amount that HCFA has already collected.

(iii) Other examples of cases in which an NPR is not used are carrier reasonable charge determinations under subpart E of this part, interim cost settlements made for HMOs, CMPs, and HCPPs under §§ 417.574 and 417.810(e) of this chapter, and initial retroactive adjustment determinations under § 413.64(f)(2) of this chapter. In the case of interim cost settlements and initial retroactive adjustment determinations, if the debtor does not dispute the adjustment determination within the timeframe designated in the notice of the determination (generally at least 15 days), a final determination is deemed to have been made. If the provider or supplier does dispute portions of the determination, a final determination is deemed to have been made on those portions when the intermediary issues a new determination in response to the dispute.

(iv) The due date of a timely-filed cost report that indicates an amount is due HCFA, and is not accompanied by payment in full. (If an additional overpayment or underpayment is determined by the carrier or intermediary, a final determination on the additional amount is made in accordance with paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii), of this section.)

(v) With respect to a cost report that is not filed on time, the day following the date the cost report was due (plus a single extension of time not to exceed 30 days if granted for good cause), until the time as a cost report is filed. (When the cost report is subsequently filed, there is an additional determination as specified in paragraphs (c)(1) (i), (ii), (iii), or (iv) of this section.)

(2) Except as required by any subsequent administrative or judicial reversal, interest accrues from the date of final determination as specified in this subsection.

(d) *Rate of interest.* (1) The interest rate on overpayments and underpayments is the higher of—

(i) The rate as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of final determination as defined in paragraph (c) of this section (this rate is published quarterly in the **Federal Register** by the Department under 45 CFR 30.13(a)); or

(ii) The current value of funds rate (this rate is published annually in the **Federal Register** by the Secretary of the Treasury, subject to quarterly revisions).

(h) *Exceptions to applicability.* (1) The provisions of this section do not apply to the time period for which interest is payable under § 413.64(j) of this chapter because the provider seeks judicial review of a decision of the Provider Reimbursement Review Board, or a subsequent reversal, affirmance, or modification of that decision by the Administrator. Prior to that time, until the provider seeks judicial review, interest accrues at the rate specified in this section on outstanding unpaid balances resulting from final determinations as defined in paragraph (c) of this section.

(i) *Nonallowable cost.* As specified in §§ 412.113 and 413.153 of this chapter, interest accrued on overpayments and interest on funds borrowed specifically to repay overpayments are not considered allowable costs, up to the amount of the overpayment, unless the provider had made a prior commitment to borrow funds for other purposes (for example, capital improvements).

(See § 413.153(a)(2) of this chapter for exceptions based on administrative or judicial reversal.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93,733. Medicare—Hospital Insurance)

Dated: December 21, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: April 4, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-16292 Filed 7-9-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7516]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, phone (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646-2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for the acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

PART 64—[AMENDED]

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
New Eligibles—Emergency Program			
Texas: Lake Worth, city of, Tarrant County	480605	May 1, 1991	Nov. 19, 1976.
South Carolina: Cameron, town of, Calhoun County	450032	.....do	Jan. 3, 1975.
Texas:			
Venus, city of, Johnson County [1]	481638	May 13, 1991	
Cranfills Gap, city of, Bosque County	481512	May 20, 1991	Jan. 17, 1979.
Arkansas: Lafayette County, unincorporated areas	050442	.....do	
Iowa: Plymouth, city of, Cerro Gordo County	190061	May 24, 1991	May 21, 1976.
Ohio: Hancock County, unincorporated areas [2]	390767	May 28, 1991	Dec. 30, 1977.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
New Eligibles—Regular Program			
North Carolina: Kannapolis, city of, Rowan & Cabarrus Counties [3]	370469	Mar. 25, 1991	Nov. 1, 1979 and Aug. 3, 1989.
California: Calimesa, city of, Riverside County [4]	060740	May 1, 1991	Apr. 14, 1980.
Ohio: Ostrander, village of, Delaware County	390892	May 3, 1991	Mar. 19, 1990.
Texas:			
Little Elm, town of, Denton County	481152	May 13, 1991	Sept. 18, 1987.
Lavon, city of, Collin County	481313	.....do	Apr. 2, 1991.
Reinstatements			
West Virginia: Pocahontas County, unincorporated areas	540283	Feb. 12, 1976, Emerg.; Oct. 17, 1989, Reg.; Oct. 17, 1989, Susp.; May 1, 1991, Rein.	Oct. 17, 1989.
Pennsylvania: Menallen, township of, Fayette County	421632	July 18, 1974, Emerg.; Apr. 16, 1991, Reg.; Apr. 16, 1991, Susp., May 3, 1991, Rein.	Apr. 16, 1991.
Colorado:			
Montezuma County, unincorporated areas	080285	Feb. 3, 1976, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.; May 3, 1991, Rein.	May 4, 1989.
Federal Heights, city of, Adams County	080240	July 28, 1976, Emerg.; April 15, 1986, Reg.; Nov. 2, 1990, Susp.; May 10, 1991, Rein.	Apr. 15, 1989.
Vermont: Panton, town of, Addison County	500169	Dec. 23, 1975, Emerg.; Sept. 18, 1986, Reg.; June 4, 1990, Susp.; May 10, 1991, Rein.	Sept. 18, 1986.
Tennessee:			
Covington, city of, Tipton County	470189	Jan. 15, 1975, Emerg.; Mar. 18, 1987, Reg.; Mar. 18, 1987, Susp.; June 8, 1987, Rein.; Apr. 12, 1991, Susp.; May 13, 1991, Rein.	Apr. 2, 1991.
Brighton, town of, Tipton County	470188	Sept. 15, 1975, Emerg.; June 17, 1986, Reg.; April 2, 1991, Susp.; May 13, 1991, Rein.	Do.
Tipton County, unincorporated areas	470340	July 3, 1975, Emerg.; Apr. 2, 1991, Reg.; Apr. 2, 1991, Susp.; May 13, 1991, Rein.	Do.
New Hampshire: Shelburne, town of, Coos County	330037	Apr. 7, 1976, Emerg.; Apr. 2, 1986, Reg.; May 3, 1990, Susp.; May 13, 1991, Rein.	Apr. 2, 1986.
Ohio: Putnam County, unincorporated areas	390465	Apr. 18, 1984, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.; May 14, 1991, Rein.	Dec. 5, 1990.
Washington: Mason County, unincorporated areas	530115	Aug. 18, 1975, Emerg.; Mar. 4, 1988, Susp.; May 24, 1991, Rein.; May 24, 1991, Reg.	May 17, 1991.
Tennessee: Hawkins County, unincorporated areas	470085	Dec. 11, 1987, Emerg.; Mar. 18, 1991, Reg.; Mar. 18, 1991, Susp.; May 28, 1991, Rein.	Mar. 18, 1991.
Region I—Regular Conversions			
Connecticut: Manchester, town of, Hartford County	090031	May 2, 1991, suspension withdrawn	May 2, 1991.
Maine:			
Bar Harbor, town of, Hancock County	230064	.....do	Do.
Bethel, town of, Oxford County	230088	.....do	Do.
Castine, town of, Hancock County	230277	.....do	Do.
Deer Isle, town of, Hancock County	230280	.....do	Do.
Island Falls, town of, Aroostook County	230022	.....do	Do.
Lamoine, town of, Hancock County	230285	.....do	Do.
Oxford, town of, Oxford County	230869	.....do	Do.
Surry, town of, Hancock County	230296	.....do	Do.
New Hampshire:			
New Durham, town of, Stratford County	330227	.....do	Do.
Newmarket, town of, Rockingham County	330136	.....do	Do.
Region II			
New Jersey:			
Blairstown, township of, Warren County	340482	.....do	Do.
Mansfield, township of, Burlington County	340102	.....do	Do.
Region III			
West Virginia: Albright, town of, Preston County	540161	.....do	Do.
Region IV			
Florida: Gadsden County, unincorporated areas	120091	.....do	Do.
Georgia: Bulloch County, unincorporated areas	130019	.....do	Do.
Region V			
Illinois: Gulfport, village of, Henderson County	170280	.....do	Do.
Ohio: Coalton, village of, Jackson County	390291	.....do	Do.
Region VI			
Texas: South Padre Island, town of, Cameron County	480115	.....do	Do.
American Samoa: Manua Islands	600001	.....do	Do.
Pennsylvania:			
Falls, township of, Bucks County	420188	.....do	Mar. 5, 1990.
Hulmeville, borough of, Bucks County	420190	.....do	Sept. 30, 1977.
Region I			
Maine:			
Arrowsic, town of, Sagadahoc County	230208	May 15, 1991, suspension withdrawn	May 15, 1991.
Beals, town of, Washington County	230133	.....do	Do.
Brooksville, town of, Hancock County	230276	.....do	Do.
Enfield, town of, Penobscot County	230384	.....do	Do.
Islesboro, town of, Waldo County	230256	.....do	Do.
Lyman, town of, York County	230195	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Northport, town of, Waldo County	230179	....do	Do.
Winter Harbor, town of, Hancock County	230302	....do	Do.
Massachusetts: Lowell, city of, Middlesex County	250201	....do	Do.
New Hampshire:			
Franconia, town of, Grafton County	330053	....do	Do.
New Ipswich, town of, Hillsborough County	330099	....do	Do.
Sunapee, town of, Sullivan County	330164	....do	Do.
Woodstock, town of, Grafton County	330079	....do	Do.
Rhode Island: Warwick, city of, Kent County	445409	....do	Apr. 16, 1991.
Region II			
New York: Cameron, town of, Steuben County	361208	....do	May 15, 1991.
Region V			
Illinois: Monticello, city of, Piatt County	170550	....do	Do.
Minnesota:			
Baxter, city of, Crow Wing County	270092	....do	Do.
Crow Wing County, unincorporated areas	270091	....do	Do.

[1] The City of Venus, TX will be converted into the Regular Program *9-27-91*.
[2] Hancock County will be converted to the Regular Program on the effective FIRM date *8-5-91*.
[3] The City of Kannapolis is located in Cabarrus and Rowan Counties, and has adopted both counties' maps for floodplain management and insurance purposes. The map dates are August 3, 1989 and November 1, 1979 respectively.
[4] The City of Calimesa has adopted Riverside County's FIRM dated *4-15-80*.
Code for reading third column: Emerg.—Emergency; Reg.-Regular; Susp.-Suspension; Rein.-Reinstatement.

Issued: June 26, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-16397 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 7517]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, phone (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646-2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and Floodplains.

1. The authority citation for part 64 continues to read as follows:

PART 64—[AMENDED]

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
New Eligible—Emergency Program			
Tennessee:			
Lincoln County, unincorporated area	470104	June 3, 1991	Oct. 28, 1977.
Franklin County, unincorporated area	470344	June 12, 1991	Mar. 31, 1978.
Arkansas: Elkins, city of, Washington County [1]	050214	June 13, 1991	Dec. 20, 1974
Louisiana:			
Collinston, village of, Morehouse Parish	220399	June 17, 1991	
Caliborne Parish, unincorporated area	220362	do	July 18, 1985.
Bienbille Parish, unincorporated area	220360	June 24, 1991	
Logansport, town of, De Sota Parish	220336	do	Sept. 5, 1978.
New Eligibles—Regular Program			
Alabama: Marshall County, unincorporated areas	010275	June 4, 1991	Sept. 28, 1990.
Florida: Montverde, town of, Lake County	120614	June 11, 1991	Nov. 15, 1984.
Texas: Oak Point, city of, Denton County [2]	481639	June 24, 1991	May 4, 1987.
Reinstatements—Regular Program			
Pennsylvania: Cambridge Springs, borough of, Crawford County	420346	July 2, 1974, Emerg.; Aug. 2, 1990, Reg.; Aug. 2, 1990, Susp.; June 6, 1991, Rein..	Aug. 2, 1990.
Oklahoma: Bryan County, unincorporated areas [3]	400482	July 21, 1982, Emerg.; Aug. 4, 1988, Susp.; June 7, 1991, Rein...	Dec. 6, 1977.
Maine: Orient, town of, Aroostook County	230029	May 6, 1977, Emerg.; Aug. 19, 1985, Reg.; May 17, 1990, Susp.; June 11, 1991, Rein..	Aug. 19, 1985.
Pennsylvania: Crawford, township of, Clinton County	421535	Mar. 17, 1977, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; June 19, 1991, Rein.	Sept. 1, 1986.
Kansas: Pretty Prairie, city of, Reno County	200549	June 10, 1977, Emerg.; Sept. 28, 1990, Reg.; Sept. 28, 1990, Susp.; June 25, 1991, Rein.	September 28, 1990.
Michigan: Pittsfield, Charter, township of, Washtenaw County	260623	July 17, 1975, Emerg.; Aug. 2, 1982, Reg.; May 15, 1991, Susp.; June 25, 1991, Rein.	May 15, 1991.
New Hampshire: Greenfield, town of, Hillsborough County	330209	Nov. 17, 1977, Emerg.; May 1, 1980, Reg.; May 3, 1990, Susp.; June 26, 1991, Rein.	May 1, 1980.
West Virginia: Sylvester, town of, Boone County	540238	July 8, 1975, Emerg.; April 16, 1991, Reg.; April 16, 1991, Susp.; April 27, 1991, Rein.	Apr. 16, 1991.
Regular Program Conversions			
Region I			
Maine:			
Hancock, town of, Hancock County	230284	June 3, 1991, suspension withdrawn	June 3, 1991.
Southwest Harbor, town of, Hancock County	230294	do	Do.
Massachusetts: Auburn, town of, Worcester County	250292	do	Do.
Vermont:			
Bradford, town of, Orange County	500069	do	Do.
Bradford, village of, Orange County	500234	do	Do.
Fairlee, town of, Orange County	500072	do	Do.
Lemington, town of, Essex County	500212	do	Do.
Thetford, town of, Orange County	500075	do	Do.
Region II			
Pennsylvania: Fairchance, borough of, Fayette County	420463	do	Do.
West Virginia:			
Belmont, town of, Pleasants County	540253	do	Do.
Pleasants County, unincorporated areas	540225	do	Do.
St. Marys, city of Pleasants County	540156	do	Do.
Region IV			
North Carolina: Columbus County, unincorporated areas	370305	do	Do.
South Carolina: Clarendon County, unincorporated areas	450051	do	Do.
Region VI			
Arkansas: Portia, town of, Lawrence County	050121	do	Do.
Region VII			
Kansas: Franklin County, unincorporated areas	200565	do	Do.
Region X			
Idaho:			
Madison County, unincorporated areas	160217	do	Do.
Rexburg, city of, Madison County	160098	do	Do.
Sugar City, city of, Madison County	160099	do	Do.
Regular Program Conversions			
Region I			
Connecticut: Plainfield, town of, Windham County	090116	June 17, 1991, suspension withdrawn	June 17, 1991.
Maine: Cranberry Isles, town of, Hancock County	230278	do	Do.
Massachusetts:			
Springfield, city of, Hampden County	250150	do	Do.
Topsfield, town of, Essex County	250106	do	Do.
Vermont:			
Brunswick, town of, Essex County	500206	do	Do.
Dummerston, town of, Windham County	500128	do	Do.
Guildhall, town of, Essex County	500047	do	Do.
Ryegate, town of, Caledonia County	500030	do	Do.
West Windsor, town of, Windsor County	500301	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region IV			
Alabama:			
Blount County, unincorporated areas	010230	.....do.....	Do.
Alabama: Cherokee County, unincorporated areas	010234	.....do.....	Do.
Florida:			
Caryville, town of, unincorporated areas	120321	June 17, 1991	Do.
Vernon, city of, unincorporated areas	120322	.....do.....	Do.
Washington County, unincorporated areas	120407	.....do.....	Do.
North Carolina: Burke County, unincorporated areas	370034	.....do.....	Do.
Region IX			
California:			
Coalinga, city of, Fresno County	060045	.....do.....	Do.
Banning, city of, unincorporated areas	060246	.....do.....	Do.

[1] The City of Elkins is included in the county-wide mapping of Washington County. The FIRM will become effective on *9-18-91*. The City will also be converted to the Regular Program on that date.
[2] The City of Oak Point has adopted Denton County's FIRM dated *5-4-87*, Panel No. 480774 0150B for floodplain management and insurance purposes.
[3] Emergency program reinstatement. The community is scheduled to be converted to the Regular Program on the FIRM effective date of *9-18-91*.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: July 2, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-16398 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Financing

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has revised DoD FAR Supplement, subpart 232.5 to increase the customary uniform progress payment rates for DoD contracts by 5 percent and to make other related changes. This rule establishes DoD customary uniform progress rates of 85% for large business, 90% for small business, and 95% for small disadvantaged business contracts awarded on and after July 1, 1991, through March 31, 1992.

DATES: *Effective date:* July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, Procurement Analyst, DAR Council, (703) 697-7266. Please cite DAR Case 91-022.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on April 24, 1991 (56 FR 18800). Following consideration of public comments, a number of changes were made to the text and clauses, well as the underlying method DoD will use to compute the yearly changes in the customary uniform progress payment rates. For that reason, the final rule is republished in its entirety.

As a result of the Defense Management Review, DoD concluded that it would maintain progress payment rates at levels appropriate in light of prevailing interest rates and restraints on current outlays. Using the methodology developed during the Defense Financial and Investment Review, DoD will average, each February, the quarterly short-term commercial borrowing rates for the most recent calendar year, to the nearest tenth of a percent. The rate used will be the quarterly short term weighted average effective loan rate, Item 11 from table 4.23, Terms of Lending at Commercial Banks; Commercial and Industrial Loans; All Banks, published in the Federal Reserve Bulletin. The computed average will be used to establish the customary uniform progress rates effective for contracts awarded between April 1 and March 31. The model used to related progress payment rates to interest rates will use standard payment days of 7 and 30 days under the prompt payment regulations for progress payments and delivery payments. Each February, these rates will be published in the **Federal Register** and a Defense Acquisition Circular.

The following chart depicts the customary uniform progress payment rates that will result from variations in the average short-term commercial borrowing rate:

interstrate rate range (%)	Progress payment rate (%)
5.7 to 6.7	75
6.8 to 8.3	80
8.4 to 11.0	85
11.1 to 16.1	90

The above progress payment rates apply to large businesses. Progress payment rates for small businesses will be 5 percent higher and for small disadvantage businesses, 10 percent higher, than the rates set forth above. In no event will the progress payment rate for large businesses drop below 75 percent (80 percent for small businesses; 85 percent for small disadvantaged businesses) or exceed 90 percent (95 percent for small businesses; 100 percent for small disadvantaged businesses). During 1990, the average short-term commercial borrowing rate was 9.8 percent. Consistent with the methodology set forth above, DoD has established progress payment rates of 85 percent for large business, 90 percent for small business, and 95 percent of small disadvantaged business contracts awarded on or after July 1, 1991, through March 31, 1992.

Flexible progress payment rates will continue to be offered as an option on contracts meeting the criteria set forth in DFARS 232.501-1(S-71). However, contractors will be required to maintain a 20 percent investment in inventory in order to obtain flexible progress payments.

B. Regulatory Flexibility Act

This final rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it ensures that the general effect of changes in prevailing market interest rates is reflected in the customary uniform progress payment rates used in defense contracts with small and small disadvantaged businesses. It is impossible to accurately estimate the number of small business entities that will be impacted. As a result of the first year's rate analysis, the current

customary uniform progress payment rates for both small and small disadvantaged business concerns are raised by 5 percent, to 90 and 95 percent, respectively, thereby reducing the financing burden placed on these entities. No public comments were received which addressed the initial Regulatory Flexibility Analysis statement published with the proposed rule in the **Federal Register** on April 24, 1991 (56 FR 18800). A final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration.

A copy of the FRFA may be obtained from: Defense Acquisition Regulations Council, Attn: Mr. Eric R. Mens, Procurement Analyst, DAR Council, OUSD(A), The Pentagon, Washington, DC 20301-3000.

C. Paperwork Reduction Act

This final rule not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Public Comments

On April 24, 1991, a proposed rule was published in the **Federal Register** (56 FR 18800). Comments received from 8 individuals and organizations were considered by the Council; several changes were made in the development of the final rule.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Nancy L. Ladd

Colonel, USAF Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. Section 232.501-1(a) is amended by revising the first two sentences to read as follows:

232.501-1 Customary progress payment rates.

(a) The customary progress payment rate applicable to DoD contracts is 75 percent for large businesses and 80 percent for small businesses if the contracts are funded with FY 87 appropriations. The customary progress payment rate for all other DoD contracts is 85 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses. * * *

3. Section 232.501-2 is revised to read as follows:

232.501-2 Unusual progress payments.

(a) Contracting officers shall not modify contracts to authorize unliquidated unusual progress payments in excess of $25 million without the prior written consent of the Director of Defense Procurement. All other unusual progress payment provisions shall be coordinated by the departmental contract financing office, with the Department of Defense Contract Finance Committee.

4. Section 232.502-1(S-71) is amended by revising the table at (S-71)(1)(vii) and by adding a new paragraph (2)(vi) to read as follows:

232.502-1 Use of customary progress payments.

(b)(1) * * *

(S-71) *Customary Flexible Progress Payments*—(1) *General.*

* * * * *

(vii) * * *

Date of contract award	Uniform rate (%)	Investment percentage (%)	Cash flow model
Prior to May 1, 1985	90	5	CASH-II.
May 1, 1985 Through October 18, 1986	80	15	CASH-III.
October 19, 1986 Through September 30, 1988	75	25	CASH-IV.
October 1, 1988 Through June 30, 1991	80	20	CASH-V.
After June 30, 1991	85	20	CASH-VI (see note below).

Note: See paragraph (2)(vi) for implementation instructions.

(2) *Using Flexible Progress Payments.*

* * * * *

(vi) From time to time, the Department of Defense may change the uniform progress payment rate and/or the minimum contractor investment, which may have an effect upon the variables within the DoD Cash Flow Computer Program. In order to avoid frequent revision and redistribution of the computer program, the program is designed to permit use of either a particular model (CASH-II, CASH-V, etc.) or a program option to input the equivalent uniform progress payment rate and minimum contractor investment (90%/5%, 80%/20%, etc.) as in the table at (1)(vii). Either method will result in the same flexible progress payment rate calculation. When the Cash Flow Computer Program does not contain the model needed for a particular situation, the contracting officer shall use the program option.

5. Section 232.502-4 is amended by removing paragraphs (S-74) and (S-75) and revising paragraphs (S-71), (S-72), and (S-73) to read as follows:

232.502-4 Contract clauses.

* * * * *

(S-71) The contracting officer shall insert the clauses at 252.232-7004, Flexible Progress Payments; FAR 52.232-16, Progress Payments; and 252.232-7008, DoD Progress Payment Rates, when a flexible progress payment rate is used in the contract. If the contract is funded with FY 87 appropriations, the clause at 252.232-7004 shall be used with its Alternate I.

(S-72) In solicitations and fixed-price contracts under which the Government will provide progress payments based on costs, the contracting officer shall—

(1) If the contract is funded with FY 87 appropriations, insert the clause at 252.232-7007, Progress Payments (and its Alternate I, if applicable) in lieu of FAR clause 52.232-16 (and its Alternate I, if applicable);

(2) In all others, insert the FAR clause at 52.232-16 (and its Alternate I, as applicable) and the clause at 252.232-7008, DoD Progress Payment Rates.

(S-73) If the contract is a letter contract funded with FY 87 appropriations, the contracting officer shall use the clause at 252.232-7007, Progress Payments, with its Alternate II. For all other letter contracts, use the FAR clause at 52.232-16, with its Alternate II, and the clause at 252.232-7008, DoD Progress Payment Rates.

6. Section 252.232–7007, paragraph (a) which precedes the clause, is revised to read as follows:

252.232–7007 Progress payments.

(a) As prescribed in 232.502–4(S–72)(1) and (S–73), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

* * * * *

7. Section 252.232–7008 is added to read as follows:

252.232–7008 DoD progress payment rates.

As described in 232.502–4 (S–71), (S–72(2), and (S–73) insert the following clause:

DoD Progress Payment Rates (JUL 1991)

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 85 percent.

(b) If the contractor is a small business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 90 percent.

(c) If the contractor is a small disadvantaged business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 95 percent.

(d) The above rates are the customary uniform progress payment rates for DoD contracts.

(End of Clause)

[FR Doc. 91–16405 Filed 7–9–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–245]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document delegates authority to the Administrators of the Department of Transportation's Operating Administrations to carry out the provisions of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615), and of the Independent Safety Board Act Amendments of 1990 (Pub. L. 101–641), which concerns low-level radioactive waste transportation. In addition, this final rule amends the delegation to the Administrator of the Research and Special Programs Administration under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*), consistent with current practices, and makes other technical amendments.

EFFECTIVE DATE: July 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Senior Attorney, Hazardous Materials Safety Division, Office of the Chief Counsel, Research and Special Programs Administration, DCC–1, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone number (202) 366–4400, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone number (202) 366–9307.

SUPPLEMENTARY INFORMATION:

I. Hazardous Materials Transportation Uniform Safety Act

On November 16, 1990, the President signed the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. L. 101–615). The HMTUSA amended the Hazardous Materials Transportation Act of 1975 (HMTA; 49 App. U.S.C. 1801 *et seq.*) and included numerous other provisions imposing duties and responsibilities upon the Secretary of Transportation.

This notice briefly describes the amendments made by the HMTUSA, and the delegations of authority to the appropriate Operating Administration within the Department of Transportation. Sections of the HMTUSA that, in and of themselves, do not impose any obligations on the Secretary, have not been delegated. Included in this category are sections setting forth the title, findings, and effective date of the statute.

Section 4

Section 4 of the HMTUSA amends section 105 of the HMTA (49 App. U.S.C. 1804) to set forth requirements for regulations governing transportation of hazardous materials. Section 105(a), as amended, requires the Secretary to issue regulations for the safe transportation of hazardous materials in interstate, intrastate, and foreign commerce. This responsibility, subject to exceptions relating to vessel bulk transportation and ships' stores and supplies, has been, and continues to be, delegated to the Administrator of RSPA.

Section 105(b), as amended, provides that the Secretary shall issue Federal standards for States and Indian tribes to use in designating highway routes for the transportation of hazardous materials by motor vehicles, and limitations and requirements with respect to highway routing. Section 105(b) also provides that the Secretary shall issue regulations for resolving disputes between or among States over a matter relating to highway routing. Section 105(c) provides that the Secretary shall periodically update and publish a list of currently effective hazardous materials highway route designations. The responsibilities in sections 105 (b) and (c) are being delegated to the Administrator of the Federal Highway Administration (FHWA). These responsibilities include regulation of the highway routing of radioactive materials, currently included in 49 CFR 177.825.

Section 105(d), as amended, provides that the Secretary shall participate in international forums and may consult with interested agencies to ensure that regulations issued by the Secretary are consistent with standards adopted by international bodies. This responsibility has been, and continues to be, delegated to the Administrator of RSPA.

Section 5

Section 5 of the HMTUSA amends section 105 of the HMTA (49 App. U.S.C. 1804) to prohibit unlawful representations concerning hazardous materials and to prohibit unlawful tampering with any marking, label, or placard, or with any package or container of hazardous materials. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

Section 6

Section 6 of the HMTUSA amends section 105 of the HMTA (49 App. U.S.C. 1804) to add requirements for shipping papers that accompany shipments of hazardous materials. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

Section 7

Section 7 of the HMTUSA amends section 106 of the HMTA (49 App. U.S.C. 1805) to require the Secretary to issue regulations for training to be given by hazardous materials employers to their employees. This responsibility is being delegated to the Administrator of RSPA.

Section 8

Section 8 of the HMTUSA adds a new subsection (c) to section 106 of the HMTA (49 App. U.S.C. 1805) to require persons transporting or causing to be transported certain hazardous materials to file a registration statement with the Secretary, in accordance with regulations to be issued by the Secretary. This responsibility is being delegated to the Administrator of RSPA.

Section 8 also adds a new subsection (d) to section 106 of the HMTA to require a motor carrier transporting certain hazardous materials to hold a safety permit issued by the Secretary. The Secretary is required to issue regulations implementing this requirement. This responsibility, with the exception of subsection (d)(3), is being delegated to the Administrator of FHWA.

Section 106(d)(3) provides that each person who offers a hazardous material may offer it to a motor carrier only if the carrier has a safety permit authorizing such transportation. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

Section 9

Section 9 of the HMTUSA amends section 107(a) of the HMTA (49 App. U.S.C. 1806(a)) to remove the requirement that a notice be published in the **Federal Register** of applications received for renewal of exemptions. The authority to issue regulations with respect to this section has been, and continues to be, delegated to the Administrator of RSPA.

Section 10

Section 10 of the HMTUSA amends section 108(b) of the HMTA (49 App. U.S.C. 1807(b)) to allow certain products containing minor radioactive components to be moved on aircraft without an exemption. The authority to issue regulations with respect to this section has been, and continues to be, delegated to the Administrator of RSPA.

Section 11

Section 11 of the HMTUSA amends section 109(d)(1)(C) of the HMTA (49 App. U.S.C. 1808(d)(1)(C)) to provide that the Secretary shall conduct a continuing review of all aspects of the transportation of hazardous materials to be able to take, rather than merely recommend, appropriate steps to assure the safe transportation of those materials. This responsibility has been, and continues to be, delegated to the Administrator of RSPA.

Section 12

Section 12 of the HMTUSA amends section 110 of the HMTA (49 App. U.S.C. 1809) to extend civil and criminal penalty sanctions to violations of orders issued by the Secretary, increase the maximum civil penalty amount and establish a minimum civil penalty amount, and add a definition of "acting knowingly" for purposes of assessing civil penalties. This authority has been, and continues to be, delegated to the Administrators of the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), FHWA, and RSPA, and the Commandant of the Coast Guard.

Section 13

Section 13 of the HMTUSA amends section 112 of the HMTA (49 App. U.S.C. 1811) to establish standards for preemption of State, political subdivision, or Indian tribe requirements, and provides for administrative preemption and waiver of preemption determination processes. The authority to issue inconsistency rulings and non-preemption determinations was delegated to the Administrator of RSPA. Consistent with that prior delegation, the authority to issue preemption determinations and waivers of preemption is being delegated to the Administrator of RSPA, with the exception of determinations concerning highway routing of hazardous materials.

The authority to issue determinations concerning highway routing of hazardous materials is being delegated to the Administrator of FHWA, consistent with the responsibilities delegated under section 105 (b) and (c). This authority includes the issuance of preemption determinations and waivers of preemption relating to the highway routing of radioactive materials. However, applications for inconsistency rulings and non-preemption determinations that are currently pending before RSPA are not being delegated to FHWA.

Section 14

Section 14 of the HMTUSA amends section 115 of the HMTA (49 App. U.S.C. 1812) to authorize appropriations for fiscal years 1991 through 1993, and to authorize the Secretary to credit funds received from non-Federal entities for expenses incurred by the Secretary in training such entities to any appropriation to carry out the HMTA. This authority is being delegated to the Administrator of RSPA.

Section 15

Section 15 of the HMTUSA amends section 116 of the HMTA (49 App. U.S.C. 1813). Section 116(a), as amended, requires the Secretary to undertake a study comparing the safety of using trains operated exclusively for transporting high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation. Section 116(b), as amended, requires the Secretary to amend existing regulations as appropriate to provide for the safe transportation by rail of high-level radioactive waste and spent nuclear fuel. The authority under sections 116 (a) and (b) is being delegated to the Administrator of FRA.

Section 116(c), as amended, requires the Secretary to undertake a study to determine which factors, if any, should be taken into consideration by shippers and carriers in order to select routes and modes which would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. This responsibility is being delegated to the Administrator of RSPA.

Sections 116(d) as amended, requires the Secretary to issue regulations concerning the inspection of vehicles transporting highway route controlled quantity radioactive materials. This responsibility is being delegated to the Administrator of FHWA.

Section 16

Section 16 of the HMTUSA requires the Secretary to employ and maintain an additional 30 hazardous materials safety inspectors, for FRA, FHWA, and RSPA. This responsibility is being delegated to the Administrators, of FRA, FHWA, and RSPA.

Section 17

Section 17 of the HMTUSA adds a new section 117A to the HMTA (49 App U.S.C. 1815) to provide for a public sector planning and training grant program. Section 117A(h) requires the Secretary to assess and collect an annual fee from each person required by or under section 106 to file a registration statement. The responsibilities in section 117A are being delegated to the Administrator of RSPA.

Section 18

Section 18 of the HMTUSA adds a new section 118 to the HMTA (49 App. U.S.C. 1816) to establish a hazardous materials employee training grant program to be administered by the National Institute of Environmental Health Sciences in consultation with the

Secretary. This responsibility is being delegated to the Administrator of RSPA.

Section 19

Section 19 of the HMTUSA adds a new section 119 to the HMTA (49 App. U.S.C. 1817) to prohibit the use of railroad tank cars constructed before January 1, 1971, for the transportation of certain hazardous materials unless the air brake equipment support attachments comply with certain standards. The authority to issue regulations with respect to this section is being delegated to the Administrator of FRA.

Section 20

Section 20 of the HMTUSA adds a new section 120 to the HMTA (49 App. U.S.C. 1818) to provide that any person who, under contract with the Federal government, transports or causes to be transported or shipped a hazardous material, or manufactures, repairs, or tests a package or container represented for use in the transportation of hazardous materials shall be subject to all Federal, State, and local laws and regulations. The authority to issue regulations with respect to this section is being delegated to the Administrator of RSPA.

Section 21

Section 21 of the HMTUSA requires the Secretary to enter into a contract for a study of railroad tank car design. This responsibility is being delegated to the Administrator of FRA.

Section 22

Section 22 of the HMTUSA adds a new section 121 to the HMTA (49 App. U.S.C. 1819) to require the Secretary to establish a working group for the purpose of establishing uniform forms and procedures for States that register persons who transport a hazardous material by motor vehicle. This responsibility is being delegated to the Administrator of FHWA.

Section 23

Section 23 of the HMTUSA amends the Motor Carrier Safety Act of 1980 to specify new minimum levels of financial responsibility. This responsibility is being delegated to the Administrator of FHWA.

Section 24

Section 24 of the HMTUSA amends the Motor Carrier Safety Act of 1984 to provide that any State receiving Federal financial assistance under the Surface Transportation Assistance Act may apply its commercial motor vehicle safety regulations to vehicles and operators leased to the United States. The authority to issue regulations with respect to this section is being delegated to the Administrator of FHWA.

Section 25

Section 25 of the HMTUSA requires the Secretary to initiate rulemaking to determine methods of improving placarding and for establishing a central reporting system and computerized telecommunications data center. Section 25 also requires the Secretary to enter into a contract with the National Academy of Sciences to study the feasibility and necessity of establishing a central reporting system and data center. This responsibility is being delegated to the Administrator of RSPA.

Section 26

Section 26 of the HMTUSA requires the Secretary to initiate a rulemaking on the feasibility of requiring carriers to establish continually monitored telephone systems equipped to provide emergency response information. This responsibility is being delegated to the Administrator of RSPA.

Section 27

Section 27 of the HMTUSA requires the Secretary to prepare a report on the benefits of a law requiring shippers to share financial responsibility with carriers for the costs assessed against the carrier for certain hazardous materials incidents. This responsibility is being delegated to the Administrator of FHWA.

Section 28

Section 28 of the HMTUSA amends the Federal Railroad Safety Act of 1970 (FRSA) to provide for State participation in hazardous materials investigations and surveillance. Authority under the FRSA is already delegated to the Administrator of FRA (49 CFR 1.49(m)). In a separate notice to be issued under the FRSA, FRA will amend its state participation regulations to give effect to section 28.

Section 29

Section 29 of the HMTUSA requires the Secretary of Labor, in consultation with the Secretary, to issue regulations requiring the retention of markings and placards on packages and containers of hazardous materials until the materials have been removed. This responsibility is being delegated to the Administrator of RSPA.

II. Independent Safety Board Act Amendments of 1990

On November 28, 1990, the President signed the Independent Safety Board Act Amendments of 1990 (Pub. L. 101-641). Section 8 of this statute requires the Secretary to conduct a study and report to Congress on the transportation of low-level radioactive waste. This responsibility is being delegated to the Administrator of RSPA.

III. Other Amendments and Technical Corrections

This rule also updates and corrects the Secretary's delegations of authority under the HMTA to the Administrators of FHWA, FRA, and RSPA, and the Commandant of the Coast Guard.

First, to reflect statutory changes, in 49 CFR 1.46(t), reference to 46 U.S.C. 170 is changed to 46 U.S.C. 3306(a)(5).

Second, to reflect statutory changes, in 49 CFR 1.48, paragraph (t) is removed and reserved, and in 49 CFR 1.49, paragraph (r) is removed and reserved.

Third, the heading of 49 CFR 1.53 is corrected by adding the word "Administration" after the words "Research and Special Programs."

Fourth, 49 CFR 1.53(b)(1) is amended by revising the cross-references to other delegations and adding language specifically defining the scope of RSPA's enforcement authority under the HMTA, consistent with current practices.

Rulemaking analyses

Since these amendments relate to Departmental management, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, the delegations of authority to the Administrators of the Operating Administrations are effective as of the date of publication of this final rule.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

§ 1.46 [Amended]

2. In Section 1.46, paragraph (t) is revised to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(t) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1801–1819, and 46 App. U.S.C. 3306(a)(5) to the extent they relate to regulations and exemptions governing the bulk transportation of hazardous materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel carrier without mark or count, and regulations and exemptions governing ships' stores and supplies.

* * * * *

§ 1.47 [Amended]

3. Section 1.47 is amended by revising paragraph (k) to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(k) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1808 (a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by air, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by air.

* * * * *

§ 1.48 [Amended]

4. Section 1.48 is amended by removing and reserving paragraph (t), revising paragraph (u), and adding new paragraph (ii) as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(t) [Reserved]

(u)(l) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1808 (a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by highway.

(2) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1804 (b) and (c); 1805(d), except paragraph (3) (49 App. U.S.C. 1805(d)(3)); 1811 relating to highway routing, except for pending applications for inconsistency rulings and nonpreemption determinations; 1813(d); and 1819.

* * * * *

(ii) Carry out the functions vested in the Secretary by sections 16, 23, 24, and 27 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615; 104 Stat. 3244 (49 App. U.S.C. 1813 note; 49 U.S.C. 10927 note; 49 App. U.S.C. 2509).

§ 1.49 [Amended]

5. Section 1.49 is amended by removing and reserving paragraph (r), revising paragraph (s), and adding a new paragraph (gg) as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(r) [Reserved]

(s)(1) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1808 (a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by railroad, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad.

(2) Carry out the functions vested in the Secretary by 49 App. U.S.C. 1813 (a) and (b); and 1817.

* * * * *

(gg) Carry out the functions vested in the Secretary by sections 16 and 21 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615; 104 Stat. 3244 (49 App. U.S.C. 1813 note and 1817 note)).

§ 1.53 [Amended]

6. Section 1.53 is amended by revising the section heading, revising paragraph (b)(1), removing paragraph (b)(2), redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), respectively, and adding new paragraphs (b)(4) and (j) as follows:

§ 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(b) *Hazardous materials.* (1) Sections 101–121 of the Hazardous Materials Transportation Act of 1975 (49 App. U.S.C. 1801–1819), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (104 Stat. 3244), except as delegated by §§ 1.46(t), 1.47(j), 1.48(u)(2), and 1.49(s)(2), and except that the enforcement activities of the Research and Special Programs Administration (RSPA) shall be limited to any matter relating to or concerning any of the following:

(i) Any violation of an exemption or approval issued under that Act;

(ii) Any violation of any requirement for a telephonic or written report of a hazardous materials incident or any other reporting requirement imposed under that Act;

(iii) Any manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any packaging, except modal-specific bulk packaging, which is represented, marked, certified, or sold for use in the transportation of hazardous materials, including any United Nations standard or DOT specification or exemption packaging;

(iv) Any manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any modal-specific bulk packaging, which is represented, marked, certified, or sold for use in the transportation of hazardous materials, including any United Nations standard or DOT specification or exemption packaging, only when requested by the modal administration with primary responsibility for such activity;

(v) Any carrier of hazardous materials only when requested by the modal administration with primary responsibility for inspecting such carrier;

(vi) Any offeror of any hazardous material for transportation with respect to its offering of any hazardous material for transportation in:

(A) Any modal-specific bulk packaging only when requested by the modal administration with primary responsibility for inspecting such packaging; or

(B) Any other packaging.

This delegation to the Administrator of RSPA does not limit the enforcement authority of the Administrators of FHWA, FRA, and FAA, and the Commandant of the Coast Guard under the Hazardous Materials Transportation Act, as amended. Those agencies have enforcement authority over all aspects of the transportation or shipment of hazardous materials by their respective modes, including the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any bulk packaging intended or represented as intended for use in the transportation of hazardous materials by their respective modes.

* * * * *

(4) Section 16, 25, 26, and 29 of the Hazardous Materials Transportation

Uniform Safety Act of 1990 (Pub. L. 101–615; 104 Stat. 3244 (49 app. U.S.C. 1813 note, 1804 note; 29 U.S.C. 655 note)).

* * * * *

(j) Section 8 of the Independent Safety Board Act Amendments of 1990 (Pub. L. 101–641; 104 Stat. 4654 (49 app. U.S.C. 1804 note)).

Issued on June 28, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91–16257 Filed 7–9–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640–1140]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure of the drift gillnet fishery.

SUMMARY: The Secretary of Commerce (Secretary) closes the drift gillnet fishery for swordfish shoreward of the outer boundary of the exclusive economic zone (EEZ) in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. The Secretary has determined that the entire annual quota for swordfish that may be harvested by drift gillnet will be reached on or before July 10, 1991. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding their quota.

EFFECTIVE DATE: Closure is effective 0001 hours local time July 10, 1991, through 2359 hours local time December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–427–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act.

By emergency rule effective June 12, 1991 (56 FR 26934, June 12, 1991), the Secretary implemented quotas and closure provisions for Atlantic swordfish. A quota of 40,785 pounds (18,500 kilograms) was established for swordfish that could be harvested by drift gillnet during each of two periods, January 1 through June 30, 1991, and July 1 through December 31, 1991. Under 50 CFR 630.28(a), the Secretary is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a notice with the Office of the Federal Register at least 5 days before the closure is to become effective.

NMFS estimates that approximately 16,000 pounds (7,258 kilograms) of swordfish were landed by drift gillnet vessels during January 1 through June 30, 1991. An additional 24,000 pounds (10,886 kilograms) of swordfish are estimated to have been landed on July 1. NMFS also estimates that 15 to 17 drift gillnet vessels began fishing between July 1 and July 3, 1991. Based on the number of vessels fishing and recent historical catch rates of approximately 11,000 pounds (4,990 kilograms) per trip for the month of July, the Secretary has determined that the combined drift gillnet quota from the January 1 through June 30 period, and the July 1 through December 31 period, of 81,570 pounds (37,000 kilograms) will be reached on or before July 10, 1991. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 0001 hours local time July 10, 1991, through 2359 hours local time December 31, 1991.

During this closure of the drift gillnet fishery, a person aboard a vessel using or having aboard a drift gillnet (1) may not fish for swordfish shoreward of the outer boundary of the EEZ; (2) may not possess shoreward of the outer boundary of the EEZ, or land in an Atlantic, Gulf of Mexico, or Caribbean coastal state, more than two swordfish per trip; and (3) may not transfer a swordfish to another vessel shoreward of the outer boundary of the EEZ.

Any person found fishing for, or in possession of, swordfish in excess of the bycatch amount after the effective date of the closure or contrary to 50 CFR part 630 will be subject to the full force and effect of the Magnuson Fishery Conservation and Management Act. Civil penalties up to $100,000 per offense, permit sanctions and seizure of illegal catches may result if violations are detected and successfully prosecuted.

Other Matters

This action is required by 50 CFR 630.28(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 3, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–16318 Filed 7–3–91; 4:47 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 132
Wednesday, July 10, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Labeling Requirements for Art Materials and Other Products Subject to the FHSA Presenting Chronic Hazards; Guidelines for Determining Chronic Toxicity; Supplemental Definition of "Toxic"; and Codification of LHAMA Requirements: Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Commission recently proposed codification of the requirements provided in the Labeling of Hazardous Art Materials Act ("LHAMA"). LHAMA mandated as a Commission rule the requirements for labeling of art materials established by the voluntary standard ASTM D-4236. The Commission also proposed guidelines for determining when customary or reasonably foreseeable use of an art material or other product subject to the Federal Hazardous Substances Act can result in a chronic hazard. Also, on the same date, the Commission proposed to amend its regulatory definition of "toxic" to specify the meaning of "chronic toxicity" as discussed in the guidelines. The Commission had specified that comments on these proposals should be submitted by July 1, 1991, and that a public hearing on these proposed rules would be held on July 18, 1991. After receiving several requests to extend the comment period, the Commission has decided to extend the period for receipt of written comments on all three proposals until September 30, 1991, and to hold the public hearing on the proposals on October 17, 1991.

DATES: Written comments on the proposed codification, guidelines, and supplemental definition should be submitted to the Office of the Secretary so that they are received by September 30, 1991.

A public hearing on the proposals is scheduled for 10 a.m. on October 17, 1991. Requests to make oral comments must be received by the Commission's Office of the Secretary no later than September 30, 1991. In order to participate persons must submit a written copy of their statement or a detailed and comprehensive summary specifying all significant issues to be raised no later than October 7, 1991. Exemptions to the date for submitting the statement or summary may only be made upon majority vote of the Commission.

ADDRESSES: Written comments, preferably in five (5) copies, should be mailed to Sheldon Butts, Deputy Secretary, Comment CH 91-3, Consumer Product Safety Commission, Washington, DC 20207 or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 420, 5401 Westbard Avenue, Bethesda, Maryland.

Requests to make oral statements and submissions of statement or summary should be mailed to Sheldon Butts, Deputy Secretary, Oral Presentation CH 91-3, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 420, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492-6800, telefax (301) 492-5387.

The hearing will be held in room 556, 5401 Westbard Avenue, Bethesda, Maryland. The rules of 16 CFR part 1052 "Procedural Regulations for Informal Oral Presentations in Proceedings Before the Consumer Product Safety Commission" shall apply. Each speaker (or group of speakers representing a single entity) will be limited to ten (10) minutes exclusive of time consumed by questions and answers to those questions.

FOR FURTHER INFORMATION CONTACT: Murray Cohn, Director, Division of Health Effects, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6994.

SUPPLEMENTARY INFORMATION: On April 17, 1991, the Commission proposed for public comment: (1) Codification of the requirements of ASTM D-4236 which Congress mandated as a Commission rule under LHAMA; (2) guidelines specifying criteria for determining when any customary or reasonably foreseeable use of an art material or other product subject to the FHSA can result in a chronic hazard; and (3) a supplemental regulatory definition of the term "toxic" to specify the meaning of chronic toxicity. 56 FR 15672 (1991); 56 FR 15705 (1991). As explained in those documents, the Commission issued these proposals pursuant to the LHAMA and the FHSA.

On November 18, 1988, Congress enacted the LHAMA which provided that, as of November 18, 1990, "the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials ('ASTM') designated D-4236 that is in effect on (November 18, 1988) * * * shall be deemed to be a regulation issued by the Commission under section 3(b)" of the FHSA, 15 U.S.C. 1262(b). Thus, since November 18, 1990, the substance of ASTM D-4236 has been in effect as a Commission rule. The Commission has stated that it is its policy to enforce these requirements as of the effective date.

For convenience, the Commission proposed codifying these requirements in the Code of Federal Regulations. Because technical changes were necessary to conform the language of the ASTM D-4236 standard to the format of the Code of Federal Regulations, the Commission issued the codification as a proposed rule and sought comments on whether the proposed codification accurately reflected Congressional intent expressed in the LHAMA. Although the codification would not become effective until after it is issued as a final rule, the Commission emphasizes that all of the substantive requirements imposed by LHAMA became effective on November 18, 1990. Thus, all producers and repackagers of art materials subject to the LHAMA are under an obligation to comply with the requirements of ASTM D-4236 as mandated by Congress.

The LHAMA also directed the Commission to issue guidelines for determining when customary and reasonably foreseeable use of an art material can result in a chronic hazard. The proposed guidelines issued on April 17, were proposed to satisfy this Congressional direction. As explained in the preamble to the proposed guidelines, because the substance of the guidelines

would apply equally to the materials other than art materials that are regulated by the FHSA, the Commission is proposing the guidelines as rules to aid in the enforcement of the FHSA in general.

The third action proposed by the Commission on April 17, 1991, was to amend the regulatory definition of "toxic" so that it would address situations where a substance presents a chronic hazard.

The Commission received several requests to extend the comment period for these proposals. The requests came from the Chemical Manufacturers Association, the Business Council on Indoor Air, the Halogenated Solvents Industry Alliance, the American Industrial Health Council, the Chemical Specialties Manufacturers Association, the Soap and Detergent Association, and Exxon Chemical Americas. In addition, the Commission received a letter from the U.S. Public Interest Research Group opposing extension of the comment period for the proposed codification.

Some requests sought extension of the comment period only for the proposed guidelines and definition. Others sought to extend the comment period for all three proposals. In general, the requesters stated that they believed the existing comment period would not be sufficient due to the complex and precedent-setting nature of the proposals. Because the Commission wants to obtain comprehensive and meaningful comments on the proposed actions, it has decided to extend the comment period for both written and oral comments.

Dated: July 3, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-16410 Filed 7-9-91; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-29397; IC-18220; File No. S7-22-91]

RIN 3235-AD53

Regulation of Securityholder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission is extending the date by which comments on Securities Exchange Act Release No. 29315 (June 17, 1991) (56 FR 28987, June 25, 1991) proposing amendments to the proxy rules must be submitted from August 9, 1991, until September 23, 1991. The Commission has received requests to extend the comment period and believes that the extension of time is appropriate, given the complexity of many of the topics under consideration.

DATES: Comments must be received on or before September 23, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-22-91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Business Roundtable has requested and others have expressed interest in an extension of the comment period. The Commission has extended the comment period for Securities Exchange Act Release No. 29315 from August 9, 1991, until September 23, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine Dixon, Division of Corporation Finance, at (202) 272-3097.

Dated: July 2, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-16246 Filed 7-9-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-34-91]

RIN 1545-AP69

Conclusive Presumption of Worthlessness of Debts Held by Banks; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to a bank's determination of worthlessness of a debt.

DATES: The public hearing will be held on Friday, August 9, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, August 2, 1991.

ADDRESSES: The public hearing will be in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (FI-34-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 581 of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** on Wednesday, May 29, 1991, at page 24154 (56 FR 25154).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, August 2, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-16327 Filed 7-9-91; 8:45 am]

BILLING CODE 4830-10-M

26 CFR Part 1

[FI-16-89]

RIN 1545-AN15

Regulations Under Section 446 of the Internal Revenue Code of 1986; Application of Section 446 With Respect to Notional Principal Contracts; Public hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the timing of income and deductions with respect to notional principal contracts.

DATES: The public hearing will be held on Monday, October 7, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, September 23, 1991.

ADDRESSES: The public hearing will be held in the Old Post Office Building, room M09, 1100 Pennsylvania Avenue, NW., Washington, DC (use the 12th street entrance). Requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R, (FI-016-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935 or 202-377-9226 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 446(b) (relating to general rules for methods of accounting) and 1092(d) (relating to definitions and special rules with respect to straddles) of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, September 23, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Department of the Treasury Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

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26 CFR Part 1

[FI-16-89]

RIN 1545-AN15

Regulations Under Section 446 of the Internal Revenue Code of 1986; Application of Section 446 With Respect to Notional Principal Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations relate to the timing of income and deductions with respect to notional principal contracts. The regulations will provide taxpayers and Internal Revenue Service personnel with guidance necessary to account for notional principal contracts. The proposed regulations also permit dealers and traders in derivative financial instruments to elect, subject to certain conditions, to mark those instruments to market. Finally, the proposed regulations define actively traded personal property under section 1092(d).

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for October 7, 1991 must be received by September 23, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comment, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (FI-16-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Karl T. Walli (202) 566-3516 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 446(b) (relating to general rules for methods of accounting) and 1092(d) (relating to definitions and special rules with respect to straddles) of the Internal Revenue Code of 1986. These regulations are cross-referenced in new proposed regulations §§ 1.61-14, 1.162-1, 1.451-1, 1.461-4, 1.988-2T, and 1.1275-4, which are also added to part 1 of title 26 of the CFR.

Except as noted below, these regulations are proposed to be effective for notional principal contracts entered into after the date a Treasury Decision based on these proposed regulations is published in the **Federal Register.** For contracts entered into prior to the effective date of the proposed regulations, the Commissioner generally will treat a method of accounting as clearly reflecting income if it takes payments into account over the life of the contract under a reasonable amortization method, whether or not the method satisfies the rules in the proposed regulations. See Notice 89-21, 1989-1 C.B. 651, 652. Proposed regulation section 1.446-4 is proposed to be effective for taxable years ending on or after the date a Treasury Decision based on these proposed regulations is published in the **Federal Register.** Proposed regulation section 1.1092(d)-1 is proposed to be effective for notional principal contracts entered into on or after July 8, 1991.

Explanation of Provisions

A. Overview

The term "notional principal contract" generally describes an agreement between two parties to exchange payments calculated by reference to a notional principal amount. The term typically encompasses interest rate swap agreements, commodity swap agreements, interest rate cap and floor agreements, currency swap agreements, and other similar contracts. Financial institutions and corporations use these products to minimize exposure to adverse changes in interest rates, commodity prices, and currency exchange rates.

In a typical interest rate swap agreement, one party agrees to make periodic payments based on a fixed rate while the counterparty agrees to make

periodic payments based on a floating rate. Payments are calculated on the basis of a hypothetical or "notional" principal amount, and payment amounts are typically netted when payments are due on common dates. A commodity swap is like an interest rate swap except that a commodity price index is used instead of an interest rate index, and the notional principal amount is measured in units of a commodity, rather than in dollars. A typical interest rate cap agreement involves an initial cash payment by one party (the purchaser) to a counterparty (the seller, usually a financial institution) in exchange for an agreement by the seller to make cash payments to the purchaser at specified future times if interest rates (as determined by a specified interest rate index) exceed a specified level. Under an interest rate floor agreement, the seller of the floor agrees to pay the purchaser if interest rates fall below a specified level.

Because the notional principal amount is not exchanged by the parties, the payments due under a typical interest rate swap, cap, or floor are not compensation for the use or forbearance of money and therefore are not "interest." On the other hand, a lump-sum payment under one of these contracts may be economically identical to a loan. In this case, the party making the lump-sum payment receives a return, part of which is properly characterized as interest under section 61(a)(4) because it represents compensation for the use or forbearance of money.

A notional principal contract may be entered into directly with another principal end-user. More commonly, however, the counterparty to the contract is a commercial or investment bank that acts as a "dealer" in such contracts. The dealer typically creates a portfolio of notional principal contracts and seeks to maintain a balanced market position. Notional principal contract dealers provide liquidity for the market by standing ready to enter into these contracts with any qualified party at any time.

As described in part B below, these proposed regulations prescribe rules for the timing of income and deductions with respect to notional principal contracts. Except in limited circumstances where amounts are recharacterized as interest, these regulations do not address the character of income, loss, or deductions with respect to notional principal contracts.

The Service is aware of the fact that many notional principal contracts are used to hedge assets or liabilities, and it is considering whether to permit taxpayers to account for a notional principal contract and the asset or liability that the notional principal contract hedges on an integrated basis. Comments on this subject are welcome. At this time, however, the proposed regulations do not permit taxpayers to determine the timing of income or deductions with respect to a notional principal contract by integrating that contract with any other asset or liability.

B. Specific Provisions

Section 1.446–3(b) states that the purpose of these proposed regulations is to clearly reflect the income and deductions from notional principal contracts. The Internal Revenue Service believes that the income from a notional principal contract can only be reflected clearly by applying accounting methods that reflect the economic substance of that contract. The proposed regulations prescribe accounting methods that are intended to reflect the economic substance of notional principal contracts without creating unnecessary complexity.

Section 1.446–3(c) defines a notional principal contract as a financial instrument that provides for payments by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. The term "specified index" includes fixed interest rates and prices, interest rate indices, stock indices, and commodity indices, as well as amounts derived from arithmetic operations on these indices, such as fixed multiples and averages. Thus, notional principal contracts governed by this section include interest rate swaps, basis swaps, interest rate caps and floors, commodity swaps, equity swaps, equity index swaps, and similar agreements. The Internal Revenue Service is currently considering whether equity and equity index swaps should be treated in the same manner as interest rate and commodity swaps for sourcing and withholding tax purposes.

Section 1.446–3(d) describes several of the common notional principal contracts that are governed by the regulations, including interest rate swaps, interest rate caps, interest rate floors, and commodity swaps. Options and forwards that entitle or obligate a party to enter into, extend, cancel, or change the terms of a notional principal contract are not notional principal contracts, although a payment made or received in connection with such an agreement is treated as a nonperiodic payment with respect to a notional principal contract if and when the notional principal contract is entered into.

Section 1.446–3(e)(1) provides that net income or deduction from a notional principal contract for a taxable year is included in or deducted from gross income for that taxable year. The net income or deduction from a notional principal contract for a taxable year equals the sum of all of the periodic payments that are recognized from that contract for the taxable year and all of the nonperiodic payments that are recognized from that contract for the taxable year.

A periodic payment is defined in § 1.446–3(e)(2) as a payment that generally is payable at fixed periodic intervals of one year or less during the entire term of a notional principal contract. Periodic payments are included in income or deducted in the taxable year to which they relate.

Section 1.446–3(e)(3) defines a nonperiodic payment as any payment made or received pursuant to a notional principal contract that is not a periodic payment or a termination payment. Nonperiodic payments must be included in income or deducted over the life of the notional principal contract in a manner that reflects the economic substance of the payment. Thus, a nonperiodic payment for a swap must be amortized in a manner consistent with the values of a series of cash-settled forward contracts that reflect the specified index and the notional principal amount. In the case of an interest rate swap, the taxpayer may elect to amortize nonperiodic payments over the term of the swap assuming a constant yield to maturity. The premium paid for a cap or floor must be amortized in a manner consistent with the values of a series of cash-settled options that reflect the specified index and the notional principal amount.

Because the Service is concerned that some taxpayers may not have access to information or expertise about option pricing, the Service intends to issue a revenue procedure to provide taxpayers with an alternative method of amortizing payments for interest rate caps and floors. The revenue procedure will be issued at the time of publication of the Treasury Decision that promulgates final regulations based upon these proposed regulations. The proposed text of this revenue procedure is set out below. Comments are requested concerning the factors contained in Tables 1 and 2 of this proposed revenues procedure, and concerning the feasibility of, and need for, similar revenue procedures covering

other notional principal contracts, such as commodity caps and floors.

Rev. Proc. **-**

Section 1. Purpose

This revenue procedure sets out optional amortization tables to compute the amount of a nonperiodic payment that is to be included in income or deducted over the life of an interest rate cap or floor agreement under 1.446-3(e)(3)(ii)(D)(2) of the Income Tax Regulations.

Sec. 2. Background and Objective

Section 1.446-3(e)(3)(ii)(A) of the regulations provides that premium payments made to purchase caps and floors are to be amortized in a manner that reflects the economic substance of the instruments. Section 1.446-3(e)(3)(ii)(D)(2) provides that the Commissioner may prescribe by revenue procedure an alternative method for allocating the premium paid or received for an interest rate cap or floor to each year of the agreement. Pursuant to that section, this revenue procedure sets out tables that taxpayers may use to amortize interest rate cap and floor premiums if they so elect. The tables set out in section 4 are derived from standard option pricing formulas, incorporating volatility assumptions thawt are intended to be consistent with representative pricing for interest rate caps and floors.

Sec. 3. Scope

.01 *In general.* The election provided in this revenue procedure applies only to interest rate caps and floors that are based on a specified index that—

(1) Meets the conditions in § 1.446-3(c) (2) (ii) or (iii) of the regulations,

(2) Is an average of specified indices described in paragraph (1) above, or

(3) is a specified index described in paragraph (1) or (2) above plus or minus a fixed number of basis points.

Taxpayers may not make the election for any interest rate cap or floor with a cap or floor rate that, at the inception of the contract, falls outside of the range of rates specified in the cap table or the floor table, respectively.

.02 *Dealers and traders.* This election is not available for any taxpayer that is a dealer or trader in any derivative financial instruments within the meaning of § 1.446-4(b) of the regulations.

Sec. 4. Procedure

.01 *Annual election.* For each taxable year in which the taxpayer enters into an interest rate cap or floor agreement, the taxpayer may elect to use the method provided in this revenue procedure for all interest rate cap and floor agreements entered into in that year. As to those agreements, the election is irrevocable.

.02 *Method of election.* The election is made by attaching to the timely filed (including extensions) federal income tax return a statement that the taxpayer is making an election under this revenue procedure for the taxable year that the cap or floor agreement is entered into.

Sec. 5. Use of the Tables

The amortization tables set forth in section 6 below may be used to derive a schedule of annual amortization rates to be applied to the unadjusted amount of the premium paid or received for an interest rate cap or floor agreement. Table 1 lists a series of factors corresponding to the years covered by the interest rate cap agreement and the number of basis points by which the cap rate differs from the specified interest rate index. Table 2 lists a series of factors corresponding to the years covered by the interest rate floor agreement and the number of basis points by which the specified interest rate index differs from the floor rate. The annual amortization amount for a year covered by an interest rate cap or floor agreement is calculated as follows:

First, obtain the sum of the factors for all years covered by the agreement.

Second, divide that year's factor by the sum of the factors for all years covered by the agreement.

Third, multiply that result by the premium to be amortized.

Taxpayers may use any reasonable method of interpolation to determine the appropriate factors for a particular cap or floor if a period covered by the agreement is less than 12 months long or the number of basis points by which the current rate differs from the cap or floor rate is between two amounts that are shown on the table.

Sec. 6. Cap and Floor Tables

TABLE 1.—FACTORS TO BE USED IN AMORTIZING INTEREST RATE CAP AGREEMENTS

Excess of cap rate over current rate in basis points	Term of interest rate cap agreement in years									
	1	2	3	4	5	6	7	8	9	10
500	0.0	2.7	15.8	31.3	50.1	64.8	79.4	91.2	100.9	109.8
450	0.0	4.4	19.8	41.3	60.0	77.0	91.1	104.5	115.6	121.8
400	0.0	8.1	26.8	49.2	70.7	90.1	103.5	115.8	128.3	135.5
350	0.3	11.5	37.2	64.3	83.7	105.8	120.9	134.7	144.1	152.2
300	0.9	19.4	52.4	80.3	104.5	124.5	139.9	152.0	161.0	168.4
250	2.6	28.3	67.9	100.7	124.7	146.9	162.1	173.6	181.7	189.5
200	5.4	45.1	88.9	122.9	151.4	173.6	187.9	196.8	206.5	210.2
150	11.8	68.3	121.2	157.2	183.8	203.2	217.8	223.3	229.9	234.6
100	25.3	101.3	159.2	195.2	224.1	239.4	249.8	251.4	256.1	256.4
50	53.1	158.5	207.3	242.6	256.7	271.5	283.2	287.4	288.2	288.8
0	100.0	216.8	264.0	295.2	311.4	320.4	326.6	327.3	327.7	323.9
(25)	139.5	261.8	301.5	322.7	341.7	349.6	351.6	353.1	347.2	341.7

TABLE 2.—FACTORS TO BE USED IN AMORTIZING INTEREST RATE FLOOR AGREEMENTS

Excess of current rate over floor rate in basis points	Term of interest rate floor agreement in years									
	1	2	3	4	5	6	7	8	9	10
350	0.0	0.1	1.9	6.3	11.4	17.9	23.3	28.3	33.2	37.4
300	0.0	1.0	7.0	16.0	26.2	34.9	42.4	49.7	55.9	59.6
250	0.1	5.5	19.1	33.2	48.2	60.0	69.6	76.6	83.8	89.2
200	0.9	16.4	41.9	61.6	79.3	95.0	105.9	114.5	120.7	126.7
150	4.9	39.4	73.7	102.2	126.1	140.6	151.7	160.8	163.6	167.4
100	18.1	79.1	125.8	155.1	180.6	194.4	205.5	211.6	209.6	210.5
50	46.6	140.9	190.6	219.7	235.0	250.6	260.0	264.1	266.4	264.6
0	100.0	216.8	264.0	295.2	311.4	320.4	326.6	327.3	327.7	323.9
(25)	143.1	267.2	308.5	339.1	352.8	361.1	364.9	363.4	360.3	353.2

Sec. 7. Example

At a time when the three-month London Interbank Offered Rate ("LIBOR") is 8%, a taxpayer purchases a three year interest rate cap agreement under which a bank is obligated to make quarterly payments to the taxpayer equal to a $25 million notional principal amount times one-quarter of the excess, if any, of three-month LIBOR over 9%. The taxpayer pays the bank a premium of $600,000 at the inception of the contract, and elects to amortize the cap premium using the method provided in this revenue procedure.

An interest rate cap agreement using LIBOR as an interest rate index qualifies under section 3.01 of this revenue procedure, and the taxpayer makes the election as required in section 4.01 of this revenue procedure for all interest rate caps and floors entered into during that taxable year.

Table 1 applies to interest rate cap agreements. Table 1 lists the following factors for a three year interest rate cap that is 100 basis points over the current LIBOR rate: 25.3, 101.3, and 159.2, for years 1, 2, and 3, respectively. The sum of these three factors is 285.8. Thus, the amortization ratio for the first 12-month period covered by the agreement is 8.85% (the ratio of the first year factor, 25.3, to the total of all factors, 285.8). The amortization ratio for the second 12-month period is 35.44% (101.3/285.8), and the amortization ratio for the third 12-month period is 55.71% (159.2/285.8). Applying these amortization ratios to the $600,000 cap premium, the taxpayer's deductions with respect to this nonperiodic payment are $53,100 for the first period (8.85%×$600,000), $212,640 for the second period (35.44%×$600,000), and $334,260 for the third period (55.71%×$600,000).

Sec. 8. Effective Date

The election provided by this revenue procedure may be made for interest rate cap and floor agreements entered into in tax years ending on or after [Insert date a Treasury Decision based on these proposed regulations is published in the **Federal Register**].

Section 1.446–3(e)(4) of the proposed regulations provides special rules for compound and disguised notional principal contracts, notional principal contracts that are hedged with other financial instruments, swaps with significant nonperiodic payments, and caps and floors that are significantly in-the-money. Because swaps with significant nonperiodic payments and caps and floors that are significantly in-the-money include a significant loan component, income is not clearly reflected unless the parties to these contracts account for the interest income and expense. The Service is aware of the withholding tax consequences that may arise from interest recharacterization. These rules are not intended to disrupt typical market transactions, and the Service solicits comments on the standards for recharacterization set out in the proposed regulations (including the examples).

Section 1.446–3(e)(5) treats payments made with respect to options and forward contracts that entitle or obligate a person to enter into a notional principal contract as nonperiodic payments if and when the notional principal contract is entered into.

Section 1.446–3(e)(6) requires all parties to a notional principal contract to recognize gain or loss from the termination of a notional principal contract in the year of termination. A termination includes both an extinguishment and an assignment of a notional principal contract.

Section 1.446–3(f) sets forth an anti-abuse rule that is intended to prevent a taxpayer from applying the accounting methods that are prescribed by the proposed regulations to a notional principal contract that is not customary commercial transaction if applying these methods to that contract would produce a material distortion of income and the taxpayer would not have entered into the transaction but for that material distortion of income. In such a case, the Commissioner has the discretion to apply accounting methods that reflect the economic substance of the transaction. This anti-abuse rule is included so that the overall purpose of the proposed regulations, which is to clearly reflect the income from a transaction by prescribing accounting methods that reflect the economic substance of the transaction, can be fulfilled with respect to all notional principal contracts.

Subject to certain conditions, § 1.446–4 permits dealers and traders in derivative financial instruments to elect a mark-to-market method of accounting in computing their taxable income. The mark-to-market election is invalid if the dealer or trader or any related party uses a lower-of-cost-or-market method (LCM) to account for securities or commodities held in a capacity as a dealer or trader (or as hedges of such securities or commodities). A "derivative financial instrument" includes notional principal contracts as well as futures, forwards, options, and short positions in commodities and securities.

The mark-to-market election is proposed to be available for taxable years ending on or after the date a Treasury Decision based on these proposed regulations is published in the **Federal Register.** The Service anticipates issuing a revenue procedure that will waive the 180-day rule contained in § 1.446–1(e)(3)(i) of the regulations so that dealers and traders can change their method of accounting for derivative financial instruments by making the mark-to-market election for their first taxable year ending on or after publication of the Treasury Decision. The Service anticipates issuing a second revenue procedure for electing taxpayers that are required to change their method of accounting for securities and commodities from the LCM method. The revenue procedures will describe how to obtain the Commissioner's consent for these changes and will set forth the terms and conditions that will be imposed for consent to be granted.

The Service anticipates that the revenue procedure governing the mark-to-market election under §1.446–4 for derivative financial instruments will impose terms and conditions (including the section 481(a) adjustment period) similar to those applicable to Category B methods of accounting. See Rev. Proc. 84–74, 1984–2 C.B. 736. The Service further anticipates that the revenue procedure governing the change from the LCM method for securities and commodities will employ a cut-off transition. Under this cut-off transition, the taxpayer's old method of accounting will continue to apply to inventory acquired prior to the year of change. The Service invites comments on appropriate terms and conditions for these revenue procedures.

Section 1.1092(d)–1(a) of the proposed regulations clarifies the definition of "actively traded" personal property. Generally, actively traded personal property includes any personal property for which brokers or dealers provide regular including information in an established financial market. Section 1.1092(d)–1(b) enumerates several categories of established financial markets.

The proposed regulations under section 1092 also address the application of that section to notional principal contracts. There has been some question whether a financial product such as an interest rate swap, which may be either an asset or a liability depending upon the movement of interest rates, constitutes an interest in personal property that is subject to section 1092 and section 1234A. Under § 1.1092(d)–1(c)(1), notional principal contracts are generally actively traded personal property. Thus, under the proposed regulations, a loss realized with respect to a notional principal contract would not be recognized under section 1092(a) to the extent the taxpayer has an unrecognized gain in one or more offsetting positions. Further, the gain or loss realized through the termination (through extinghuishment or assignment) of a taxpayer's rights and

obligations under a notional principal contract would generally be treated as gain or loss from the sale of a capital asset under section 1234A.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public comment procedure requirements of 5 U.S.C. 553(b) do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f)(1) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing is scheduled for October 7, 1991. See Notice of Public Hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Karl T. Walli, Office of the Assistant Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 through 1.67–4T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.161–1 through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.446–1 through 1.469–11T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.985–0 through 1.989(c)–1T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1091–1 through 1.1102–3

Banks, Banking, Holding companies, Income taxes, Reporting and recordkeeping requirements, Securities.

26 CFR 1.1231–1 through 1.1297–3T

Income taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 1.61–14(b) is amended by adding a new paragraph (b)(7) to read as follows:

§ 1.61–14 Miscellaneous items of gross income.

* * * * *

(b) * * *

(7) *Timing of income from notional principal contracts.* For the timing of income with respect to notional principal contracts, see §§ 1.446–3 and 1.446–4.

Par. 3. Section 1.162–1(b) is amended by adding a new paragraph (b)(8) to read as follows:

§ 1.162–1 Business expenses.

* * * * *

(b) * * *

(8) *Timing of deductions from notional principal contracts.* For the timing of deductions with respect to notional principal contracts, see §§ 1.446–3 and 1.446–4.

Par. 4. New §§ 1.446–3 and 1.446–4 are added to read as follows:

§ 1.446–3 Notional principal contracts.

(a) Table of contents. This paragraph (a) lists captioned paragraphs contained in §§ 1.446–3 and 1.446–4, proposed regulations under section 446 of the Internal Revenue Code.

§ 1.446–3 Notional Principal Contracts

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§ 1.446–4 Mark-to-Market Election for Dealers and Traders of Derivative Financial Instruments

(a) Mark-to-market election.
(b) Dealer or trader defined.
(c) Derivative financial instrument defined.
(d) Effective date.

(b) *Purpose.* This section is intended to clearly reflect the income and deductions from notional principal contracts by prescribing accounting methods that reflect the economic substance of such contracts.

(c) *Definitions and scope.*—(1) *Notional principal contract*—(i) *In general.* A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange

for specified consideration or a promise to pay similar amounts. An agreement between a taxpayer and a qualified business unit (as defined in section 989(a)) of the taxpayer, or among qualified business units of the same taxpayer, is not a notional principal contract because a taxpayer can not enter into a contract with itself.

(ii) *Notional principal contracts governed by this section.* Notional principal contracts governed by this section include interest rate swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, total return swaps, equity index swaps, and similar agreements. Each confirmation under a master agreement to enter into agreements governed by this section is treated as a separate notional principal contract. A contract described in section 1256(b) is not a notional principal contract. A contract under which neither party's obligations are determined by reference to a variable specified index is not a notional principal contract. An option or forward contract that entitles or obligates a person to enter into, extend, cancel, or change the terms of a notional principal contract is not a notional principal contract, but payments made under such an option or forward contract may be governed by paragraph (e)(5) of this section.

(iii) *Section 988 transactions.* To the extent that the timing rules provided in this section are inconsistent with the rules that apply to any notional principal contract that is also a section 988 transaction, as defined in § 1.988–1T(a), the rules of section 988 and the regulations thereunder govern.

(2) *Specified index.* The term specified index refers to:

(i) A single fixed interest rate, price, or amount;

(ii) An interest rate that is made known publicly and offered currently to unrelated borrowers in private lending transactions by a financial institution;

(iii) An interest rate that reflects an average (based on a statistically significant sample) of current yields on a class of publicly traded debt instruments;

(iv) A price or index of prices of publicly traded stock, securities, commodities, or other publicly traded property;

(v) An amount or index of amounts that reflects the total return on one or more publicly traded stocks or securities;

(vi) An interest rate, price, index, or amount that is more or less than a specified index by a constant number of percentage or basis points, dollars, or other units in which the specified index is measured;

(vii) An interest rate, price, index, or amount that is expressed as a fixed multiple of a specified index;

(viii) Any other interest rate, price, index, or amount that is designated by the Commissioner in a revenue ruling, revenue procedure, or other administrative pronouncement published in the Internal Revenue Bulletin; and

(ix) an amount that is arrived at through any average or combination of paragraphs (c)(2) (i) through (viii) of this section.

(3) *Notional principal amount.* For purposes of this section, a notional principal amount is any specified amount of money or property that, when multiplied by a specified index, measures the parties' rights and obligations under a contract. The notional principal amount serves only as a reference for determining the amount of payments to be made under the contract and is not actually borrowed or loaned between the parties.

(d) *Description of common notional principal contracts*—(1) *Swap.* A swap is a notional principal contract that generally involves one party making periodic payments of a fixed amount and the other party (often referred to as the counterparty) making periodic payments based on a variable specified index. Both parties' payments are determined by reference to the same notional principal amount. The payments by one party to a swap contract may be made on different dates than the payments by the counterparty. If the parties' payments are made on the same date, the swap contract may provide for the payments to be offset, so that only the net amount is paid by one party to the other.

(2) *Interest rate swap.* An interest rate swap is a swap in which the notional principal amount is expressed in dollars and the specified index is an interest rate or interest rate index.

(3) *Commodity swap.* A commodity swap is a swap in which the notional principal amount is expressed in units of a commodity and the specified index is a commodity price or commodity price index. Typically, one party agrees to make periodic payments equal to a specified fixed price (e.g., an average of the forward prices at the time the swap contract is entered into) times the notional principal amount, and the counterparty agrees to make periodic payments equal to a specified index (e.g., the spot price on specified dates in the future) times the notional principal amount.

(4) *Basis swap.* A basis swap or floating swap is an interest rate swap in which the parties agree to swap payments based on one variable specified index multiplied by a notional principal amount for payments based on another variable specified index multiplied by the notional principal amount.

(5) *Cap.* A cap is a notional principal contract which generally involves an initial cash payment by one party to a counterparty in exchange for an agreement by the counterparty to make cash payments at specified future dates equal to the product of a notional principal amount and the excess, if any, of a specified index over a fixed interest rate, price, or amount (the cap rate).

(6) *Interest rate cap.* An interest rate cap is a cap in which the notional principal amount is expressed in dollars and the specified index is an interest rate or interest rate index.

(7) *Floor.* A floor is a notional principal contract which generally involves an initial cash payment by one party to a counterparty in exchange for an agreement by the counterparty to make cash payments at specified future dates equal to the product of a notional principal amount and the excess, if any, of a fixed interest rate, price, or amount (the floor rate) over a specified index.

(8) *Interest rate floor.* An interest rate floor is a floor in which the notional principal amount is expressed in dollars and the specified index is an interest rate or interest rate index.

(9) *Collar.* A cap and floor can be combined to create a collar. In a collar transaction a party purchases a cap and simultaneously sells a floor, or purchases a floor and simultaneously sells a cap. Ordinarily, the cap and the floor are based on the same notional principal amount and specified index.

(e) *Taxable year of inclusion and deduction*—(1) *Net income or deduction from a notional principal contract for the taxable year.* The net income or deduction from a notional principal contract for a taxable year is included in or deducted from gross income for that taxable year. The net income or deduction from a notional principal contract for a taxable year equals the total of all of the periodic payments that are recognized from that contract for the taxable year under paragraph (e)(2) of this section and all of the nonperiodic payments that are recognized from that contract for the taxable year under paragraph (e)(3) of this section. No portion of a payment by a party is recognized prior to the first year to which any portion of a payment by the counterparty relates.

(2) *Periodic payments*—(i) *Definition*—(A) *In general.* Periodic payments are payments made or received pursuant to a notional principal contract that are payable at fixed periodic intervals of one year or less during the entire term of the contract, and the amounts of which are based on a single specified index. Payments made to acquire a cap or a floor are not periodic payments.

(B) *Short or long first or last intervals.* Payments made or received pursuant to a notional principal contract do not fail to be periodic payments solely because the interval that precedes the first or last payment under the contract is shorter than, or no more than 90 days longer than, the fixed periodic interval between each of the other payments under the contract.

(ii) *Recognition rules*—(A) *In general.* All taxpayers, regardless of their method of accounting, must recognize the ratable daily portion of a periodic payment for the taxable year to which that portion relates. Any amount that is recognized under this paragraph (e)(2)(ii)(A) is included in or deducted from the taxpayer's gross income as provided in paragraph (e)(1) of this section.

(B) *Rate set in arrears.* If the amount of a periodic payment is not determinable at the end of a taxable year because the value of the specified index is not fixed until a date that occurs after the end of the taxable year, the ratable daily portion of a periodic payment that relates to that taxable year must be based on the specified index that would have applied if the value of the specified index were fixed as of the last day of the taxable year. Any difference that arises due to a change in the specified index between the last day of the taxable year and a date the payment becomes fixed under the contract is taken into account as an adjustment to the income or deduction from the notional principal contract for the taxable year during which the payment becomes fixed.

(iii) *Examples.* The following examples illustrate the application of paragraphs (e)(1) and (e)(2) of this section.

Example 1. (a) On April 1, 1992, *A* enters into a contract with unrelated counterparty *B* under which, for a term of five years, *A* is obligated to make a payment to *B* each April 1, beginning April 1, 1993, in an amount equal to the London Interbank Offered Rate ("LIBOR"), as determined on the immediately preceding April 1, multiplied by a notional principal amount of $100 million. Under the contract, *B* is obligated to make a payment to *A* each April 1, beginning April 1, 1993, in an amount equal to 8% multiplied by the same notional principal amount. *A* and *B* are calendar year taxpayers that use the accrual method of accounting. On April 1, 1992, LIBOR is 7.80%.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section and an interest rate swap as described in paragraph (d)(2) of this section. LIBOR and a fixed interest rate of 8% are each specified indices under paragraph (c)(2) of this section. All of the payments to be made by *A* and *B* are periodic payments under paragraph (e)(2)(i) of this section because they are each based on a single specified index and are payable at fixed periodic intervals of one year or less throughout the term of the contract.

(c) Under the terms of the swap agreement, on April 1, 1993, *B* is obligated to make payment to *A* of $8,000,000 (8%×$100,000,000) and *A* is obligated to make a payment to *B* of $7,800,000 (7.80%×$100,000,000). Under paragraph (e)(2)(ii) of this section, the ratable daily portions for 1992 are the amounts of these periodic payments that are attributable to *A* and *B*'s taxable year ending December 31, 1992. The ratable daily portion of the 8% fixed leg is $6,027,397 (275 days/365 days×$8,000,000), and the ratable daily portion of the floating leg is $5,876,712 (275 days/365 days×$7,800,000). The net amount for the taxable year is the difference between the ratable daily portions of the two periodic payments, or $150,685 ($6,027,397–$5,876,712). Accordingly, *A* has net income of $150,685 from this swap for 1992, and *B* has a corresponding net deduction of $150,685.

(d) The $49,315 unrecognized balance of the $200,000 net periodic payments that are made on April 1, 1993, will be included in *A*'s and *B*'s net income or deduction from the contract for 1993.

(e) If the parties had entered into the contract on February 1, 1992, the result would not change because no portion of either party's obligation to make a payment under the swap relates to the period prior to April 1, 1992. Consequently, under the rules of paragraph (e)(1) of this section, neither party would accrue any income or deduction from the swap for the period from February 1, 1992, through March 31, 1992.

Example 2. (a) On April 1, 1992, *C* enters into a contract with unrelated counterparty *D* under which, for a period of five years, *C* is obligated to make a fixed payment to *D* each April 1, beginning April 1, 1993, in an amount equal to 8% multiplied by a notional principal amount of $100 million. *D* is obligated to make semi-annual payments to *C* each April 1 and October 1, beginning October 1, 1992, in an amount equal to one-half of the LIBOR amount as of the first day of the preceding 6-month period multiplied by the notional principal amount. *C* is a calendar year taxpayer that uses the accrual method of accounting. *D* is a calendar year taxpayer that uses the cash receipts and disbursements method of accounting. LIBOR is 7.80% on April 1, 1992, and 7.46% on October 1, 1992.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section and an interest rate swap as described in paragraph (d)(2) of this section. LIBOR and a fixed interest rate of 8% are each specified indices under paragraph (c)(2) of this section. All of the payments to be made by *C* and *D* are periodic payments under paragraph (e)(2)(i) of this section because they are each based on a single specified index and are payable at fixed periodic intervals of one year or less throughout the term of the contract.

(c) Under the terms of the swap agreement, *D* pays *C* $3,900,000 (.5×7.8%×$100,000,000) on October 1, 1992. In addition, *D* is obligated to pay *C* $3,730,000 (.5×7.46%$100,000,000) on April 1, 1993. *C* is obligated to pay *D* $8,000,000 on April 1, 1993. Under paragraph (e)(2)(ii) of this section, *C*'s and *D*'s ratable daily portions for 1992 are the amounts of the periodic payments that are attributable to their taxable year ending December 31, 1992. The ratable daily portion of the 8% fixed leg is $6,027,397 (275 days/365 days×$8,000,000), and the ratable daily portion of the floating leg is $5,785,495 ($3,900,000+(92 days/182 days×$3,730,000)). Thus, *C*'s net deduction from the contract for 1992 is $241,902 ($6,027,397–$5,785,495) and *D* reports $241,902 of net income from the contract for 1992.

(d) The $1,972,603 unrecognized balance of the fixed leg and the $1,844,506 unrecognized balance of the floating leg will be included in *C*'s net income or deduction from the contract for 1993.

Example 3. (a) The facts are the same as in *Example 1*, except that *A*'s obligation to make payments based upon LIBOR is determined by reference to LIBOR on the day each payment is due. LIBOR is 8.25% on December 31, 1992, and 8.16% on April 1, 1993.

(b) On December 31, 1992, the amount that *A* is obligated to pay *B* is not known because it will not become fixed until April 1, 1993. Under paragraph (e)(2)(ii)(B) of this section, the ratable daily portion of the periodic payment from *A* to *B* for 1992 is based on the value of LIBOR on December 31, 1992. Thus, the ratable daily portion of the floating leg is $6,215,753 (275 days/365days×8.25%×$100,000,000) while the ratable daily portion of the fixed leg is $6,027,397 (275 days/365 days×$8,000,000). The net amount for 1992 on this swap is $188,356 ($6,215,753–$6,027,397). Accordingly, *B* has $188,356 of net income from the swap in 1992, and *A* has a net deduction of $188,356.

(c) On April 1, 1993, *A* makes a net payment to *B* of $160,000 ($8,160,000 payment on the floating leg—$8,000,000 payment on the fixed leg). For purposes of determining their net income or deduction from this contract for the year ended December 31, 1993, *B* and *A* must adjust the net income and deduction they recognized in 1992 by $67,808 (275 days/365 days×($8,250,000 presumed payment on the floating leg—$8,160,000 actual payment on the floating leg)).

(3) *Nonperiodic payments*—(i) *Definition.* A nonperiodic payment is any payment made or received pursuant to a notional principal contract that is not a periodic payment (as defined in paragraph (e)(2)(i) of this section) or a termination payment (as defined in paragraph (e)(6)(i) of this section). Examples of nonperiodic payments are

the premium for a cap or floor agreement (even if it is paid in installments), the yield adjustment fee for an off-market interest rate swap agreement, and the premium for an option to enter into a swap if and when the option is exercised.

(ii) *Recognition rules*—(A) *In general.* All taxpayers, regardless of their method of accounting, must recognize the ratable daily portion of a nonperiodic payment for the taxable year to which that portion relates. Except as provided in paragraph (e)(4) of this section, any amount that is recognized under this paragraph (e)(3)(ii) is included in or deducted from the taxpayer's gross income as provided in paragraph (e)(1) of this section. A nonperiodic payment must be recognized over the term of a notional principal contract in a manner that reflects the economic substance of the contract. Thus, the timing of income and deductions from the contract depends upon the type of notional principal contract involved and its economic characteristics. Most notional principal contracts resemble other financial instruments, and the amount of a nonperiodic payment made pursuant to the notional principal contract corresponds to the value of those instruments, adjusted to reflect a discount for early payment or a premium for late payment.

(B) *Swaps.* A nonperiodic payment that relates to a swap must be recognized over the term of the contract by allocating it in accordance with the values of a series of cash-settled forward contracts that reflect the specified index and the notional principal amount. For purposes of this allocation the forward prices, interest rate and compounding method used by the parties to determine the amount of the nonperiodic payment will be respected, if reasonable.

(C) *Caps and floors.* Any payment that relates to the purchase and sale of a cap or floor must be recognized over the term of the agreement by allocating it in accordance with the values of a series of cash-settled option contracts that reflect the specified index and the notional principal amount. For purposes of this allocation the option pricing used by the parties to determine the total amount paid for the cap or floor will be respected, if reasonable. Only the portion of the purchase price that is allocable to the option contract or contracts that expire during a particular period is recognized for that period. Accordingly, straight-line and accelerated amortization methods are not permissible.

(D) *Optional methods for interest rate swaps, caps and floors*—(*1*) *Interest rate swaps.* A nonperiodic payment made or received with respect to an interest rate swap may be allocated to each period of the swap contract by assuming that the nonperiodic payment represents the present or future value, determined under the constant yield to maturity method, of a series of equal payments made throughout the term of the swap contract (the "level payment constant yield to maturity method"). Under this method, for example, an upfront payment is allocated by dividing each equal payment into its principal recovery and time value components. The principal recovery components of the equal payments are treated as periodic payments that are deemed to be made on each of the dates that the swap contract provides for periodic payments by the payor of the nonperiodic payment or, if none, on each of the dates that the swap contract provides for periodic payments by the recipient of the nonperiodic payment. Generally, the calculation must use semi-annual compounding and a discount rate equal to the overpayment rate established under section 6621(a)(1) on the date the nonperiodic payment is fixed. However, if the parties actually use the level payment constant yield to maturity method to determine the amount of the nonperiodic payment, the calculation may employ the actual interest rate and compounding method used in that determination.

(*2*) *Interest rate caps and floors.* The Commissioner may, by a revenue procedure published in the Internal Revenue Bulletin, provide an alternative method for allocating the premium paid or received for interest rate caps and floors to each year of the agreements.

(iii) *Examples.* The following examples illustrate the application of paragraph (e)(3) of this section.

Example 1. (a) On January 1, 1992, when LIBOR is 8%, *F* pays unrelated party *E* $600,000 for a contract which obligates *E* to make a payment to *F* each quarter equal to one-quarter of the excess, if any, of three-month LIBOR over 9% with respect to a notional principal amount of $25 million. Both *E* and *F* are calendar year taxpayers. *E* provides *F* with a schedule of allocable premium amounts that indicates the cap was priced according to a variation of the Black-Scholes option pricing formula and that the total premium is allocable to the following periods:

	Pricing allocation
1992	$55,000
1993	225,000
1994	320,000
	600,000

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section and an interest rate cap as described in paragraph (d)(6) of this section. LIBOR is a specified index under paragraph (c)(2) of this section. Any payments made by *E* to *F* are periodic payments under paragraph (e)(2)(i) of this section because they are payable at fixed periodic intervals of one year or less throughout the term of the contract and are based on a specified index. The $600,000 cap premium paid by *F* to *E* is a nonperiodic payment as defined in paragraph (e)(3)(i) of this section.

(c) The Black-Scholes model is recognized in the financial industry as a standard technique for pricing interest rate cap agreements. Therefore, although *E* has modified the Black-Scholes option pricing model, the schedule generated by *E*'s proprietary Black-Scholes model is consistent with the economic substance of the cap, and may be used by both *E* and *F* for calculating their ratable daily portions of the cap premium. *E* recognizes the ratable daily portion of the cap premium as income, and *F* recognizes the ratable daily portion of the cap premium as a deduction based on the pricing schedule. Thus, *E* and *F* account for the contract as follows:

	Ratable daily portion
1992	$55,000
1993	225,000
1994	320,000
	600,000

(d) Any periodic payments under the cap agreement (that is, payments that *E* makes to *F* because LIBOR exceeds 9%) are included in the parties' net income or deduction from the contract in accordance with paragraph (e)(2) of this section.

(e) If *F* had paid *E* $600,000 to enter into the same cap agreement on November 1, 1991, the ratable daily portions would not change because no portion of the premium paid for the cap relates to the period prior to January 1, 1992. Consequently, under the rules of paragraph (e)(1) of this section, neither party would accrue any income or deduction with respect to the cap for the period from November 1, 1991, through December 31, 1991.

Example 2. (a) The facts are the same as in *Example 1*, except that the cap is purchased by *F* on November 1, 1992. The first determination date under the cap agreement is January 31, 1993 (the last day of the first quarter to which the contract relates). LIBOR is 9.1% on December 31, 1992, and is 9.15% on January 31, 1993.

(b) *E* and *F* recognize $9,192 (61 days/365 days × $55,000) as the ratable daily portion of the nonperiodic payment for 1992, and

include that amount in their net income or deduction from the contract for 1992. If *E*'s pricing model allocates the cap premium to each quarter covered by the contract, the ratable daily portion is 61 days/92 days times the premium allocated to the first quarter.

(c) Because LIBOR exceeds 9% of December 31, 1992, *F* must recognize as income (and *E* as a deduction) the ratable daily portion of the presumed payment under paragraph (e)(3)(ii), or $4,143 (61 days/92 days × .25 × .001 × $25,000,000). Therefore, *E* reports $5,049 of net income from the contract for 1992 ($9,192 − $4,143), and *F* reports a net deduction from the contract of $5,049.

(d) On January 31, 1993, *E* pays *F* $9,375 (.25 × .0015 × $25,000,000) under the terms of the cap agreement. For purposes of determining their net income or deduction from this contract for the year ended December 31, 1993, *E* and *F* must adjust their respective income and deduction recognized in 1992 from the cap by $2,072 (61 days/92 days × ($9,375 actual payment under the cap − $6,250 presumed payment under the cap)).

Example 3. (a) The facts are the same as in *Example 1*, except that *F* agrees to pay *E* for the cap in three annual installments of $219,335 each, on January 1 of 1992, 1993 and 1994.

(b) Under paragraph (e)(3)(ii)(C) of this section, the cap is presumed to be priced using an option pricing formula that allocates increasing portions of the premium to the later year of the contract. Although *E* agrees to receive the $600,000 premium for the cap over three years (with interest compounded annually at 10%), rather than at the inception of the contract, *E* and *F* must recognize the payments in accordance with the economic substance of a comparable series of option contracts.

(c) First, to determine the cap premium that would have been paid at the beginning of the contract, the installment payments are discounted back using the rate of interest and compounding method that was used by the parties to compute the installments.

(d) Second, the $600,000 cap premium must be recognized by allocating it among the options that comprise the cap contract in accordance with an option pricing model that allocates increasing portions of the premium to the later years of the contract, or under the optional method referred to in paragraph (e)(3)(ii)(D)(*2*) of this section. In this case *E*'s option pricing model allocates $55,000 to the first year, $225,000 to the second year, and $320,000 to the third year.

(e) Third, the excess of the sum of the installment payments over the $600,000 premium must be recognized by allocating it among the options that comprise the cap contract. That excess represents an additional amount that is paid by *F* to *E* for the right to pay installments instead of paying the entire premium at the outset of the contract. In this case, *F* pays an additional $58,005, the excess of the $658,005 in total installment payments (3 × $219,335) over the $600,000 cap premium. Of this additional amount, $38,066 is allocated to 1992 (10% of the unpaid premium, of $600,000 − $219,335) and the remainder of $19,939 to 1993 (10% of $380,665 + $38,066 − $219,335). None of the additional amount is allocated to 1994, because *F*'s final payment to *E* occurs on January 1, 1994.

(f) *E* and *F* report net income or deduction from the contract equal to the net of any periodic payments that *E* makes to *F* under the cap agreement, the ratable daily portion of the premium that is recognized under paragraph (d) of this example, and that additional amount that is recognized under paragraph (e) of this example.

Example 4. (a) The facts are the same as in *Example 1*, except that *F* views the cap as a wasting asset, composed of a series of options each of which is expected to lose value prior to the year in which it expires. Accordingly, *F* claims amortization deductions for the cap premium as follows:

	Deduction claimed
1992	$320,000
1993	225,000
1994	55,000
	600,000

F reasons that, because it could have purchased a two-year cap at the beginning of 1992 for $280,000 ($55,000 + $225,000) instead of a three-year cap for $600,000, $320,000 of the premium ($600,000 − $280,000) must be allocable to the first year of the contract.

(b) This is not an acceptable method of allocating the premium to the options that comprise the cap contract because it is inconsistent with the economic substance of the contract. *F*'s conclusion that the options will lose value before they expire is based on an implicit assumption that interest rates will not rise during the term of the cap. If this were true, the cap would be valueless.

(c) *F* must allocate the premium paid among the options that comprise the cap contract in accordance with an option pricing model that allocates increasing portions of the premium to the later years of the contract, or under the optional method referred to in paragraph (e)(3)(ii)(D)(*2*) of this section.

Example 5. (a) On January 1, 1992, *G* enters into an interest rate swap agreement with unrelated counterparty *H* under which, for a term of five years, *G* is obligated to make annual payments at 11% and *H* is obligated to make annual payments at LIBOR on a notional principal amount of $100 million. At the time *G* and *H* enter into this swap agreement, the rate for similar on-market swaps is LIBOR to 10%. To compensate for this difference, on January 1, 1992 *H* pays *G* a yield adjustment fee of $3,695,897. *G* provides *H* with information that indicates that the amount of the yield adjustment fee was determined as the present value, at 11% compounded annually, of five annual payments of $1,000,000 (1% × $100,000,000). *G* and *H* are calendar year taxpayers.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section and an interest rate swap as described in paragraph (d)(2) of this section. The yield adjustment fee is a nonperiodic payment as defined in paragraph (e)(3)(i) of this section.

(c) In this case, the parties have actually used the level payment constant yield to maturity method to determine the amount of the yield adjustment fee. Accordingly, under paragraph (e)(3)(ii)(D)(*1*) of this section, the yield adjustment fee may be recognized over the life of the agreement using the level payment constant yield to maturity method and the discount rate and compounding method used by the parties. With annual compounding at 11%, the ratable daily portions are:

	Level payment	Time value component	Ratable daily portion
1992	$1,000,000	$406,549	$593,451
1993	1,000,000	341,269	658,731
1994	1,000,000	268,809	731,191
1995	1,000,000	188,378	811,622
1996	1,000,000	99,098	900,902
	5,000,000	1,304,103	3,695,897

(d) *G* also makes swap payments to *H* at 11%, while *H* makes swap payments to *G* based on LIBOR. The net of the ratable daily portions of the 11% payments by *G*, the ratable daily portions of the LIBOR payments by *H*, and the ratable daily portions of the yield adjustment fee paid by *H* equals the annual net income or deduction from the contract for both *G* and *H*. The time value components are needed to compute the ratable daily portions of the yield adjustment fee paid by *H*, but do not otherwise affect the parties' method of accounting for this contract.

Example 6. (a) On January 1, 1992, *I* enters into a commodity swap agreement with unrelated counterpart *J* under which, for a term of six years, *I* is obligated to make annual payments based on a fixed price of $22 per barrel times a notional amount of 500,000 barrels of crude oil and *J* is obligated to make annual payments equal to the spot price times the same notional amount. In addition, on January 1, 1992, *I* pays *J*

$1,200,000 for entering into the swap agreement. *I* and *J* are calendar year taxpayers.

(h) This contract is a notional principal contract as defined by paragraph (c)(1) of this section and a commodity swap as described in paragraph (d)(3) of this section. The $1,200,000 payment is a nonperiodic payment as defined by paragraph (e)(3)(i) of this section.

(c) Under paragraph (e)(3)(ii)(B) of this section, the nonperiodic payment must be recognized over the term of the agreement by allocating the payment to each forward contract in accordance with the value of each forward contract. In allocating the $1,200,000 payment in accordance with the values of a series of forward contracts, *I* and *J* must use the forward prices and interest rates that were used to determine the amount of the payment.

(4) *Special rules*—(i) *Compound and disguised notional principal contracts.* A financial instrument that is comprised of two or more notional principal contracts, such as a collar or an interest rate swap with a cap on the floating leg, is treated for purposes of this section as two or more separate notional principal contracts. In addition, the Commissioner may recharacterize all or part of a transaction (or series of transactions) if the effect of the transaction (or series of transactions) is to avoid the application of this section.

(ii) *Hedged notional principal contracts.* A taxpayer that, either directly or through a related party, hedges a notional principal contract by purchasing, selling, or otherwise entering into other notional principal contracts, futures, forwards, options, or other financial instruments may not use the optional methods of paragraph (e)(3)(ii)(D) of this section to amortize any nonperiodic payment made or received with respect to the hedged notional principal contract. Moreover, the Commissioner may require that amounts paid to or received by the taxpayer under the notional principal contract be treated in a manner that is consistent with the economic substance of the transaction as a whole.

(iii) *Swaps with significant nonperiodic payments.* A swap that involves significant nonperiodic payments is treated as including one or more loans, which must be accounted for by both parties to the contract independently of the swap. For example, a significant upfront payment includes a self-amortizing loan that must be amortized over the term of the agreement using the level payment constant yield to maturity method described in paragraph (e)(3)(ii)(D)(*1*) of this section. The time value component of the loan is recognized as interest for all purposes of the Code. Interest that is recognized under this paragraph is not included in the net income or loss from the contract under paragraph (e)(1) of this section. For purposes of section 956, the Commissioner may treat any nonperiodic swap payment, whether or not it is significant, as one or more loans.

(iv) *Caps and floors that are significantly in-the-money.* If, on the date that a cap or floor is entered into, the current value of the specified index in a cap agreement exceeds the cap rate by a significant amount, or the floor rate exceeds the current value of the specified index in a floor agreement by a significant amount, then the cap or floor is treated as including one or more loans. The time value component of a cap or floor that is significantly in-the-money is recognized as interest for all purposes of the Code. For any taxable year during the term of the agreement, this time value component is deemed to be the lesser of:

(A) The ratable daily portion of the cap or floor premium that is recognized for the taxable year under paragraph (e)(3)(ii)(C) of this section, multiplied by the discount rate used by the parties to determine the amount paid for the cap or floor compounded from the date the premium is paid to the earlier of the date such option contracts expire or the end of the taxable year; or

(B) The net income or deduction from the cap or floor for the taxable year under paragraph (e)(1) of this section, computed without regard to this paragraph (e)(4)(iv).

In the case of an interest rate cap or an interest rate floor, a significant amount for purposes of this paragraph (e)(4)(iv) is more than 25 basis points. Interest recognized under this paragraph (e)(4)(iv) is not included in the net income or deduction from the cap or floor under paragraph (e)(1) of this section.

(v) *Examples.* The following examples illustrate the application of paragraph (e)(4) of this section.

Example 1. (a) On January 1, 1992, *K* sells to unrelated counterparty *L* three cash settlement European-style put options on Eurodollar time deposits with a strike rate of 9%. The options have exercise dates of January 1, 1993, January 1, 1994, and January 1, 1995, respectively. If LIBOR exceeds 9% on any of the exercise dates, *L* will be entitled, by exercising the relevant option, to receive from *K* an amount that corresponds to the excess of LIBOR over 9% times $25 million. *L* pays *K* $650,000 for the three options. Furthermore, *K* is related to *F*, the cap purchaser in Example 1 under paragraph (e)(3) of this section.

(b) *F*'s cap agreement with *E* is hedged by *K*'s option agreements with *L*. Accordingly, under paragraph (e)(4)(ii) of this section, *F* cannot make use of the optional method contemplated by paragraph (e)(3)(ii)(D)(*2*) of this section in amortizing the premium paid under the cap agreement. *F* must amortize the premium paid or received in accordance with the rules of paragraph (e)(3)(ii)(C) of this section.

(c) The method that *E* may use to account for its agreement with *F* is not affected by the application of paragraph (e)(4)(ii) of this section to *F*.

Example 2. (a) The facts are the same as in *Example 5* under paragraph (e)(3) of this section.

(b) In this case, the yield adjustment fee of $3,695,897 is not a significant nonperiodic payment within the meaning of paragraph (e)(4)(iii) of this section, in light of the amount of the fee in proportion to the present value of the total amount of fixed payments due under the contract. Accordingly, no portion of the swap is recharacterized as a loan under that paragraph.

Example 3. (a) On January 1, 1992, unrelated parties *M* and *N* enter into an interest rate swap contract. Under the terms of the contract, *N* agrees to make five annual payments to *M* equal to LIBOR times a notional principal amount of $100 million. In return, *M* agrees to pay *N* 6% of $100 million annually, plus $15,163,147 on January 1, 1992. At the time *M* and *N* enter into this swap agreement the rate for similar on-market swaps is LIBOR to 10%, and *N* provides *M* with information that the amount of the initial payment was determined as the present value, at 10% compounded annually, of five annual payments from *M* to *N* of $4,000,000 (4% of $100,000,000).

(b) Although the parties have characterized this transaction as an interest rate swap, the $15,163,147 payment from *M* to *N* is significant when compared to the present value of the total fixed payments due under the contract. Accordingly, under paragraph (e)(4)(iii) of this section, the transaction is recharacterized as consisting of a $15,163,147 loan from *M* to *N* that *N* repays in installments over the term of the agreement, and an interest rate swap between *M* and *N* in which *M* immediately pays the installment payments on the loan back to *N* as part of its fixed payments on the swap in exchange for the LIBOR payments by *N*.

(c) The loan is amortized using the level payment constant yield to maturity method; that is, by finding the level payments needed to amortize the $15,163,147 payment over five years. Under paragraph (e)(3)(ii)(D)(*1*), the level payment may be determined in this case using the parties' discount rate of 10% and annual compounding. *M* and *N* account for the principal and interest on the loan as follows:

	Level payment	Interest component	Principal component
1992	$4,000,000	$1,516,315	$2,483,685
1993	4,000,000	1,267,946	2,732,054
1994	4,000,000	994,741	3,005,259
1995	4,000,000	694,215	3,305,785
1996	4,000,000	363,636	3,636,364
	20,000,000	4,836,853	15,163,147

M recognizes interest income, and *N* claims an interest deduction, each taxable year equal to the interest component of the deemed installment payments on the loan. These interest amounts are not included in the parties' net income or deduction from the contract under paragraph (e)(1) of this section. The principal components are needed to compute the interest component of the level payment for the following period, but do not otherwise affect the parties' income or deductions from this contract.

(d) *N* also makes swap payments to *M* based on LIBOR, and receives swap payments from *M* at a fixed rate that is equal to the sum of the stated fixed rate and the rate calculated by dividing the annuitized annual loan payments by the notional principal amount. Thus, the fixed rate on this swap is 10%, which is the sum of the stated rate of 6% and the rate calculated by dividing the annual loan payment of $4,000,000 by the notional principal amount of $100,000,000, or 4%. Using the methods provided in paragraph (e)(2) of this section, the 10% swap payments from *M* to *N* and the LIBOR swap payments from *N* to *M* are included in the parties' net income or deduction from the contract for each taxable year.

Example 4. (a) The facts are the same as in *Example 3*, except that on January 1, 1992, *N* also enters into an interest rate swap agreement with unrelated counterparty *O* under which, for a term of five years, *N* is obligated to make annual payments at 12% and *O* is obligated to make annual payments at LIBOR on a notional principal amount of $100 million. At the time *N* and *O* enter into this swap agreement, the rate for similar on-market swaps is LIBOR to 10%. To compensate for this difference, *O* pays *N* an upfront yield adjustment fee of $7,391,794 for this off-market swap agreement. This yield adjustment fee equals the present value, at 11% compounded annually, of five annual payments of $2,000,000 (2% of $100,000,000).

(b) In substance, these two interest rate swaps are the equivalent of a fixed rate borrowing by *N* of $22,554,941 ($15,163,147 from *M* plus $7,391,794 from *O*). Under paragraph (e)(4)(ii) of this section, the Commissioner may recharacterize the swaps as a loan which *N* will repay with interest in five annual installments of $6,000,000 each (the difference between the 12% *N* pays under the swap with *O* and the 6% *N* receives under the swap with *M*, multiplied by the $100,000,000 notional principal amount).

(c) *N* recognizes no net income or deduction from the contract under paragraph (e)(1) of this section because, as to *N*, there is no notional principal contract income or expense. However, the recharacterization of *N*'s hedged transactions as a loan has no effect on the way *M* and *O* must each account for their notional principal contracts under paragraphs (e)(1) through (e)(4) of this section.

(5) *Options and forwards to enter into notional principal contracts.* An option or forward contract that entitles or obligates a person to enter into a notional principal contract is subject to the general rules of taxation for options or forward contracts. Any payment with respect to the option or forward contract is treated as a nonperiodic payment for the underlying notional principal contract under the rules of paragraphs (e)(3) and (e)(4) of this section if and when the underlying notional principal contract is entered into.

(6) *Termination payments*—(i) *Definition.* A payment, whether made or received, that extinguishes or assigns all or a proportionate part of the rights and obligations of any party under a notional principal contract is a termination payment for all parties to the contract. A termination payment includes a payment made between the original parties to the contract (an extinguishment), and a payment made between one party to the contract and a third party (an assignment).

(ii) *Taxable year of inclusion and deduction by original parties.* Except as otherwise provided in section 1092 and the regulations thereunder, the parties to a notional principal contract recognize a termination payment that is received or made with respect to that contract in the year of the extinguishment or assignment. Any payments that have been made or received pursuant to a notional principal contract but that have not been recognized under paragraph (e)(2) or (e)(3) of this section are also recognized in the year of the extinguishment or assignment. If only a proportionate part of a party's rights and obligations is extinguished or assigned, then only that proportion of the unrecognized payments is recognized under this paragraph.

(iii) *Taxable year of inclusion and deduction by assignees.* A termination payment made or received by an assignee pursuant to an assignment of a notional principal contract is recognized by the assignee under the rules of paragraphs (e)(3) and (e)(4) of this section as a nonperiodic payment for the notional principal contract that is in effect after the assignment.

(iv) *Substance over form.* The Commissioner may treat any economic benefit that is given or received by a taxpayer in lieu of a termination payment as a termination payment. *Cf.* § 1.988–2T(d)(2)(ii)(B) (realization by offset) and § 1.988–2T(d)(2)(v) (extension of the contract maturity date).

(v) *Exception.* This paragraph (e)(6) does not apply to any contract that is integrated with other property or debt pursuant to section 988(d) and the regulations thereunder.

(vi) *Examples.* The following examples illustrate the application of this paragraph (e)(6).

Example 1. (a) On January 1, 1992, *P* enters into an interest rate swap agreement with unrelated counterparty *O* under which, for a term of seven years, *P* is obligated to make annual payments based on 10% and *O* is obligated to make semi-annual payments based on LIBOR and a notional principal amount of $100 million. *P* and *O* are both calendar year taxpayers. On January 1, 1994, when the fixed rate on a comparable LIBOR swap has fallen to 9.5%, *P* pays *O* $1,895,393 to terminate the swap.

(b) The payment from *P* to *O* extinguishes the swap contract and is a termination payment, as defined in paragraph (e)(6)(i) of this section, for both parties. Accordingly, under paragraph (e)(6)(ii) of this section, *P* recognizes a loss of $1,895,393 in 1994 and *O* recognizes $1,895,393 of income or gain in 1994.

Example 2. (a) The facts are the same as in *Example 1*, except that on January 1, 1994, *P* pays unrelated party *R* $1,895,393 to assume all of *P*'s rights and obligations under the swap with *Q*. In return for this payment, *R* agrees to pay 10% of $100 million annually to *Q* and to receive LIBOR payments from *Q* for the remaining five years of the swap.

(b) The payment from *P* to *R* terminates *P*'s interest in the swap contract with *Q* and is a termination payment, as defined in paragraph (e)(6)(i) of this section, for all three parties. Under paragraph (e)(6)(ii) of this section, *P* recognizes a loss of $1,895,393 in 1994. Under paragraph (e)(6)(ii) of this section, *Q* recognizes $1,895,393 of income or gain in 1994 and is permitted to amortize its resulting $1,895,393 of basis in the interest rate swap over the remaining five year term of the swap agreement, using a method prescribed for amortizing nonperiodic swap payments under paragraph (e)(3)(ii) of this section.

(c) Under paragraph (e)(6)(iii) of this section, the assignment payment that *R* receives from *P* is a nonperiodic payment for an interest rate swap. Because the assignment payment is not a significant nonperiodic payment within the meaning of paragraph (e)(4)(iii) of this section, *R* amortizes the $1,895,393 over the five year term of the swap agreement in accordance with paragraph (e)(3)(ii) of this section.

Example 3. (a) The facts are the same as in *Example 2*, except that on January 1, 1992, *Q* pays *P* a yield adjustment fee to enter into the seven year interest rate swap. In accordance with paragraph (e)(3)(ii) of this section, *P* and *Q* included the ratable daily portions of that nonperiodic payment in their net income or deduction from the contract for 1992 and 1993. On January 1, 1994, $300,000 of the nonperiodic payment has not yet been recognized by *P* and *Q*.

(b) Under paragraph (e)(6)(ii) of this section, *P* recognizes a loss of $1,595,393 ($1,895,393 − $300,000) in 1994 and *Q* recognizes $1,595,393 of income or gain in 1994. *R* accounts for the termination payment in the same way it did in *Example 2*; the existence of an unamortized payment with respect to the original swap has no effect on *R*.

Example 4. (a) On January 1, 1992, *S* enters into an interest rate swap agreement with unrelated counterparty *T* under which, for a term of five years, *S* will make annual payments at 10% and *T* will make annual

payments at LIBOR on a notional principal amount of $50 million. On January 1, 1993, unrelated party *U* pays *T* $15,849,327 for the right to receive the four remaining $5,000,000 payments from *S*. Under the terms of the agreement between *S* and *T*, *S* is notified of this assignment, and *S* is contractually bound thereafter to make its payments to *U* on the appropriate payment dates. *S*'s obligation to pay *U* is conditioned on *T* making its LIBOR payment to *S* on the appropriate payment dates.

(b) Because *T* has assigned to *U* its rights but not its obligations under the notional principal contract, *U*'s payment to *T* is not a termination payment as defined in paragraph (e)(6)(i) of this section. The transaction between *T* and *U* does not affect the way that *S* and *T* account for the notional principal contract under this section.

(f) *Anti-abuse rule. If:*

(1) A taxpayer enters into a transaction that is not a customary commercial transaction,

(2) Applying the rules of this section to that transaction would produce a material distortion of the taxpayer's income from that transaction, and

(3) The taxpayer would not have entered into the transaction but for that material distortion, then the Commissioner may exercise his discretion to depart from the rules of this section as necessary to clearly reflect the income from the transaction.

(g) *Effective date.* These regulations are effective for notional principal contracts entered into after [the date a Treasury Decision based on these proposed regulations is published in the **Federal Register**].

§ 1.446–4 Mark-to-market election for dealers and traders in derivative financial instruments

(a) *Mark-to-market election.* A dealer or trader in derivative financial instruments may elect to account for those instruments on its income tax return at market value. A dealer or trader in derivative financial instruments may elect to account for a derivative financial instrument at market value only if:

(1) The dealer or trader purchased or entered into the derivative financial instrument either—

(i) In its capacity as a dealer or trader; or

(ii) As a hedge of another financial instrument that the dealer or trader holds or intends to hold in its capacity as a dealer or trader;

(2) The dealer or trader values all of the derivative financial instruments that it holds in its capacity as a dealer or trader (or as hedges of such instruments) at market for purposes of computing net income or loss on its applicable financial statement (as defined in § 1.56–1(c)), and the dealer or trader uses the same methods of valuing those instruments on its income tax return;

(3) The dealer or trader and all persons related to the dealer or trader within the meaning of sections 267(b) and 707(b)(1) account for the securities and commodities that they hold in their capacity as dealers or traders (or as hedges or such securities or commodities) on their income tax returns either on the basis of cost or on the basis of market value, but not at the lower of cost or market value;

(4) A description of the methods employed to value each class of derivative financial instruments is attached to the dealer's or trader's income tax return for each year; and

(5) The method elected under this section is used consistently in subsequent years, unless another method is authorized by the Commissioner pursuant to a written request under § 1.446–1(e) of the regulations.

(b) *Dealer or trader defined.* For purposes of this section, a dealer or trader in derivative financial instruments is any taxpayer with an established place of business that:

(1) Makes a market in derivative financial instruments by regularly and actively offering to enter into, offset, assign, or otherwise terminate positions in these instruments with customers in the ordinary course of its trade or business; or

(2) Regularly and actively engages in the frequent and substantial trading of derivative financial instruments for the principal purpose of deriving gains and profits from trading those instruments rather than from periodic income such as dividends, interest, net income from notional principal contracts, or long term appreciation.

(c) *Derivative financial instrument defined.* For purposes of this section, the term "derivative financial instrument" includes options, forward contracts, futures contracts, notional principal contracts, short positions in securities and commodities, and any similar financial instrument.

(d) *Effective date.* This regulation is effective for taxable years ending on or after [the date a Treasury Decision based on these proposed regulations is published in the **Federal Register**].

Par. 5. Section 1.451–1 is amended by adding a new paragraph (f) to read as follows:

§ 1.451–1 General rule for taxable year of inclusion.

* * * * *

(f) *Timing of income from notional principal contracts.* For the timing of income with respect to notional principal contracts, see §§ 1.446–3 and 1.446–4.

Par. 6. Section 1.461–4 which was proposed to be added on June 7, 1990, at 55 FR 23235, would be amended by adding a new paragraph (f) to read as follows:

§ 1.461–4 Economic performance.

* * * * *

(f) *Timing of deductions from notional principal contracts.* Economic performance on a notional principal contract occurs as provided under §§ 1.446–3 and 1.446–4.

Par. 7. In § 1.988–2T, paragraph (h) is added to read as follows:

§ 1.988–2T Recognition and computation of exchange gain or loss (Temporary regulations).

* * * * *

(h) *Timing of income and deductions from notional principal contracts.* Except as provided in another section of the Internal Revenue Code (or regulations thereunder), or in § 1.988–5T, income or loss with respect to a notional principal contract described in § 1.988–1(a)(2)(iii)(B) (other than a currency swap) is exchange gain or loss. For the rules governing the timing of income and deductions with respect to notional principal contracts, see §§ 1.446–3 and 1.446–4. See paragraph (e)(2) of this section with respect to currency swaps.

Par. 8. New § 1.1092(d)–1 is added to read as follows:

§ 1.1092(d)–1 Definitions and Special Rules.

(a) *Actively traded.* Actively traded personal property includes any personal property for which there is an established financial market.

(b) *Established financial market.* For purposes of this section, an established financial market includes:

(1) A national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(2) An exchange that is exempted from registration under section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e) because of its limited volume of transactions;

(3) A domestic board of trade designated as a contract market by the Commodities Futures Trading Commission;

(4) A foreign securities exchange or board of trade that satisfies analogous regulatory requirements under the law of the jurisdiction in which it is organized;

(5) An interbank market; and

(6) An interdealer market. An interdealer market is characterized by a

system of general circulation which regularly disseminates price quotations or pricing information by identified dealers, brokers, or traders.

(c) *Notional principal contracts*—(1) *Actively traded property.* For purposes of section 1092(d)(1)—

(i) A notional principal contract (as defined in § 1.446–3(c)(1)) constitutes personal property of a type that is actively traded if similar contracts are actively traded within the meaning of paragraph (a) of this section; and

(ii) The rights and obligations of a party to a notional principal contract constitute an interest in personal property.

(2) *Effective date.* This paragraph (c) applies to notional principal contracts entered into on or after July 8, 1991.

Par. 9. Section 1.1275–4 which was proposed to be added on April 8, 1986, at 51 FR 12022, and amended on February 28, 1991, at 56 FR 8308, would be amended by adding a new paragraph (i) to read as follows:

§ 1.1275–4 Contingent payments.

* * * * *

(i) *Timing of income and deductions from notional principal contracts.* For the rules governing the timing of income and deductions with respect to notional principal contracts characterized as including a loan, see §§ 1.446–3 and 1.446–4.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–16035 Filed 7–8–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 20, 25, and 301

[PS–092–90]

RIN 1545–AP44

Special Valuation Rules; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of public hearing on proposed regulations.

SUMMARY: This document contains a correction to a notice of public hearing on proposed regulations which was published in the **Federal Register** for Tuesday, April 9, 1991 (56 FR 14321). This notice of public hearing on proposed regulations relates to special valuation rules under chapters 11 and 12 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels, (202) 566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These rules contain proposed additions to the Estate and Gift Tax Regulations under section 2701 through 2703 of the Internal Revenue Code and the regulations under section 6501 of the Internal Revenue Code.

Need for Correction

As published, the notice of public hearing contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of public hearing which was the subject of FR Doc. 91–8296, is corrected as follows:

On page 14321, column 1, in the preamble under the heading "**SUPPLEMENTARY INFORMATION**", line three, the number "2701" is corrected to read "2701 through 2703 and 6501".

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–16328 Filed 7–9–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 301

[IA–119–90]

RIN 1545–AP55

Imposition of Penalty for Failure To Comply With Information Reporting Requirements; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to the imposition of penalties for failure to comply with information reporting requirements and waiver of these penalties due to reasonable cause.

DATES: The public hearing will be held on September 9, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by August 26, 1991.

ADDRESSES: The public hearing will be in the Internal Revenue Building, Second Floor, room 2615, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (IA–119–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 6721 through 6724 of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** on Thursday, February 21, 1991, at page 7001 (56 FR 7001).

The Rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, August 26, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:15 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–16326 Filed 7–9–91; 8:45 am]

BILLING CODE 4830–01–M

PANAMA CANAL COMMISSION

35 CFR Part 101

RIN 3207–AA31

Arriving and Departing Vessels: Various Communication, Documentation, Sanitation and Admeasurement Requirements

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Panama Canal Commission proposes to amend its regulations in title 35, Code of Federal Regulations, § 101.2, "Boarding of Arriving Vessels." The purpose of the proposed change is to expand the

permissible locations for boarding arriving vessels to include designated anchorage areas outside the breakwater at the Atlantic entrance to the Canal. This change will increase the efficiency of the boarding operations by expanding the geographic areas available to board ships at anchor and by reducing the need to board ships while they are underway.

DATES: Comments must be received by August 9, 1991.

ADDRESSES: Comments should be sent to Secretary, Panama Canal Commission, 2000 L Street NW, suite 550, Washington, DC 20036–4996, or Panama Canal Commission, Office of General Counsel, APO Miami, FL 34011–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, 2000 L Street NW, suite 550 Washington, DC 20036–4996, Telephone: (202) 634–6441 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011–507–52–7511.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission proposes to revise § 101.2 by changing paragraphs (a) and (b) to expand existing boarding areas and to permit the boarding of vessels by Commission personnel outside the defined anchorage areas when, weather and seas permitting, it is deemed safe to do so. The reason for this revision is that many vessels do not anchor in the defined boarding areas but merely pass through them during transit. Often anchoring outside of existing permissible areas is made necessary by other Panama Canal Commission marine or safety requirements. In those cases, vessels can only be cleared after they are underway for transit. Expanding the boarding area would permit a greater number of ships to be boarded and cleared while at anchorage awaiting transit, thus, reducing the number of ships that are required to be cleared while underway and easing the burden on the boarding officers.

Boarding outside the breakwater at the Atlantic entrance of the Canal or other than off the seaward end of the marked entrance at the Pacific entrance will take place only when weather and sea conditions permit.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291, dated February 17, 1981 (47 FR 13193). The basis for that determination is, first, the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined this rule is not subject to the requirements of sections 603 and 604 of title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 101

Anchorages, Boarding officers, Canal, Vessels.

For the reasons set forth above, the Panama Canal Commission proposes to amend 35 CFR part 101 as follows:

PART 101—ARRIVING AND DEPARTING VESSELS: VARIOUS COMMUNICATION, DOCUMENTATION, SANITATION AND ADMEASUREMENT REQUIREMENTS

1. The authority citation for part 101 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, and 44 U.S.C. 3501.

2. Section 101.2 is being amended by revising paragraphs (a) and (b) to read as follows:

§ 101.2 Boarding of arriving vessels.

(a) Unless otherwise directed, all arriving vessels will anchor in designated anchorages to await instructions. No person other than boarding officials of the Panama Canal Commission and the Republic of Panama may go on board or leave any vessel until such vessel has been entered by the commission and where applicable, by the Republic of Panama.

(b) Arriving vessels that are subject to inspection for compliance with Panama Canal shipping and navigation regulations will normally be boarded upon arrival inside the breakwater at the Atlantic entrance of the Canal or off the seaward end of the dredged, marked channel at the Pacific entrance. When such vessels are not boarded immediately upon arrival, they shall anchor in a designated anchorage area and await the boarding official. Weather and sea conditions permitting, the boarding of vessels may take place outside of these areas. Boarding will be performed by a Commission boarding official in accordance with the procedures established under this part.

* * * * *

Dated: June 6, 1991.

Gilberto Guardia F.,

Administrator, Panama Canal Commission.

[FR Doc. 91–16284 Filed 7–9–91; 8:45 am]

BILLING CODE 3640–04–M

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend 39 CFR 265.8(e)(3) to increase the present fee for individual requests for change of address information from $1.00 to $3.00. The increase is necessary to help meet the present costs of providing the service.

DATES: Comments must be received on or before September 9, 1991.

ADDRESSES: Written comments should be directed to the General Manager, Retail Management Division, Delivery, Distribution and Transportation Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC 20260–7152. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 7142, U.S. Postal Service Headquarters.

FOR FURTHER INFORMATION CONTACT: Robert Muschamp, Retail Management Division, (202) 268–3549.

SUPPLEMENTARY INFORMATION: The service for providing change of address information for individual requests allows any person upon payment of the prescribed fee to obtain the new address of any specific customer who has filed a permanent Change of Address Order (PS Form 3575 or handwritten order). Disclosure is limited to the address of the specifically identified individual about whom the information is requested.

An increase of the current $1 fee to $3 for each individual request for change of address information is necessary to help meet the actual costs of providing the service. The current fee of $1 has remained unchanged since 1967, and the Postal Service has found that $1 does not meet the present costs of providing the service. A cost study in December 1990 by the Rate Studies Division of the Postal Service revealed that the cost for

providing this change of address information is $5.03. However, since a fee of $1 has been charged for over 20 years, a sudden drastic increase to $5.03 would be unreasonable. The Postal Service, therefore, proposes to increase the fee to $3 to mitigate the impact of the cost increase on the people who need this service, while bringing the fee more in line with the actual cost of providing the service. A further increase to match costs will be evaluated in the future after the Postal Service assesses the impact of the increase to $3.

A corresponding change will also be made in the Administrative Support Manual, § 352.653.

The Postal Service will continue with the policy stated in 39 CFR 265.8(g)(5) of waiving the prescribed fee under stated circumstances.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendment of 39 CFR 265.8(e)(3).

List of Subjects in 39 CFR Part 265

Release of information, Postal Service.

For the reasons set out in this notice, the Postal Service proposes to amend part 265 of 39 CFR as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation in 39 CFR part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

§ 265.8 [Amended]

2. In part 265, revise § 265.8(e)(3) to read as follows:

* * * * *

(e) * * *

(3) *Change of address orders.* Although change of address information is not required by the Freedom of Information Act to be made available to the public, the fee for obtaining this information in accordance with paragraph (d)(1) of § 265.6 is included in this section as a matter of convenience. The fee for searching for a change of address order is $3.00. This fee is charged regardless of whether a permanent change of address is found on file. (See paragraph (g)(5) of this section.)

* * * * *

An appropriate amendment to 39 CFR 265.8(e)(3) to reflect the proposed change will be published if the proposal is adopted.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-16302 Filed 7-9-91; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA3-1-5125; A-1-FRL-3972-2]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revised Regulations Requiring Statewide Installation of Stage II Vapor Recovery Systems

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to grant limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts Department of Environmental Protection (DEP). The proposed revision would require statewide installation of Stage II fuel vapor recovery systems. Volatile organic compounds (VOCs) escape during refueling at motor vehicle fuel dispensing facilities. The SIP revision would help reduce emissions of volatile organic compounds (VOCs) by an estimated 8,950 tons per year. The action is being taken pursuant to section 110 (c) of the Clean Air Act as amended, Public Law 101-549, section 101(c), 104 Stat. 2399, 2406 (to be codified at 42 U.S.C. 7410(K)). Stage II vapor recovery is an ozone control strategy designed to recover 95 percent by weight of the vapors generated during the transfer of gasoline from underground storage tanks to motor vehicles.

DATES: Comments must be received on or before August 9, 1991.

DATE OF PUBLICATION: Public comments on this document are requested and will be considered before final action is taken on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Acting Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, region I, AAA-104, JFK Federal Building, Boston, Massachusetts 02203. Copies of the State submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the U.S. Environmental Protection Agency, region I, One Congress Street, 10th Floor, Boston, MA and at the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: M. Molly Magoon (617) 565-3220; FTS 835-3220.

SUPPLEMENTARY INFORMATION: On May 17, 1990, DEP submitted proposed revisions to its ozone SIP. DEP withdrew part of this submittal regarding Stage I controls in Berkshire County, until DEP makes certain changes to the rest of the State's Stage I regulation. The revisions pertaining to Stage II would add a new subsection, (6), at 310 CMR § 7.24. Region I technical staff has reviewed this proposed SIP revision, and EPA noted deficiencies. The DEP has indicated that the noted deficiencies would be corrected prior to EPA taking final action on this request. EPA is proposing to grant limited approval of this Stage II program. However, EPA will be publishing Stage II guidance, in accordance with the Clear Air Act, section 182(b)(3)(A) in August 1991; and, after the guidance is published, EPA will be reviewing any further State SIP submittal in accordance with the guidance.

Deficiencies in Current Rule

The first deficiency is found at 310 CMR 7.24(6)(b), and now states: "* * * unless the motor vehicle fuel dispensing facility is equipped with a properly operating vapor collection and control system." The present language of this sentence could be misinterpreted to mean only one pump per facility needs Stage II vapor recovery control equipment installed. This provision should be clarified to cover all nozzles at a facility. The State could clarify this provision altering it to state:

"* * * unless the motor vehicle fuel dispensing facility is equipped with a properly installed, operated, and maintained vapor collection and control system on each nozzle from which motor vehicle fuel is dispensed."

The second deficiency that must be addressed before EPA approves these revisions is found at 310 CMR 7.24(6)(c)(4). This section requires that the vapor recovery system recover at least 95 percent by weight of motor vehicle fuel, without stating a certified test method or requiring certified equipment needed to assume compliance. As an alternative to testing each station for 95 percent control effectiveness, DEP must require installed Stage II systems to be certified to achieve at least 95 percent by either

the California ARB, or by using California ARB test procedures and methods or equivalent test procedures and methods developed by the DEP and submitted as a SIP revision.

The third deficiency with the current SIP revisions involves the differences in sales volumes of gasoline at facilities requiring them to install Stage II. The differences are between the throughput sales volumes as stated in the current SIP revisions and those that will be required by the Amendments. Currently, DEP requires fueling facilities with throughput sales volumes of greater than 20,000 gallons of motor vehicle fuel per month to install Stage II systems. The quantity of throughput sales volumes that will be required by the Amendments to be in place by November 15, 1992, will include facilities with sales volumes of greater than 10,000 gallons per month. Therefore, the current Massachusetts' Stage II SIP revisions will require additional revisions by November 15, 1992 in order for the Agency to grant full approval of the SIP revision as complying with the amended Act.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for compliance with the provisions of the 1990 Amendments (hereinafter "Amendments"), enacted on November 15, 1990. This requested revision does not meet all the requirements for Stage II vapor recovery in the Amendments see Public Law 101-549. Section 103, 104 Stat. 2399, 2430 (to be codified at 42 U.S.C. 7482(b)(3). However, those requirements need not be met until November 15, 1992. In the interim, this revision will contribute to reductions in VOC emissions until DEP meets the requirements of the Amendments. Therefore, EPA is proposing to grant limited approval of this revision because it contributes to reasonable further progress toward attainment of the national ambient air quality standard for ozone. The EPA's limited approval does not mean DPE's Stage II program complies with all of the new Stage II requirements under the Amendments. Hence, before November 15, 1992, Massachusetts must submit a SIP revision request that meets all of the requirements of section 182(b)(3)(A) and is consistent with EPA's guidance on Stage II.

PROPOSED ACTION: EPA is proposing to grant limited approval of Massachusetts' Stage II vapor recovery regulation. If Massachusetts' DEP makes corrections to the noted deficiencies, EPA will propose to grant full approval at that time. EPA will publish Stage II guidance, in accordance with the Clean Air Act, section 182(b)(3)(A) in August 1991 and will review any further Massachusetts Stage II SIP submittal in accordance with that guidance. Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: May 31, 1991.

Paul Keough,

Acting Regional Administrator, Region 1.

[FR Doc. 91-16261 Filed 7-9-91; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 56, No. 132
Wednesday, July 10, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 91-088]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Givens, Program Assistant, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit number	Permittee	Date issued	Organism	Field test location
91-011-01	Monsanto Agricultural Company.	05-30-91	Tomato plants genetically engineered to contain a gene which alters the ripening process.	Jersey County, Illinois.
91-051-03	Upjohn Company	05-30-91	Soybean plants genetically engineered to express tolerance to bialophos herbicides.	Crittenden County, Arkansas; Christian County, Illinois; and Queen Annes County, Maryland.
91-024-04	U.S. Department of Agriculture, Agricultural Research Service.	05-31-91	Potato plants genetically engineered to express a modified *Alcaligenes eutrophus* 2,4-D mono-oxygenase gene.	Bingham County, Idaho.
91-042-01	Agrigenetics Company	05-31-91	Rapeseed plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Columbia County, Wisconsin.
91-102-01 Renewal of Permit 90-065-06, issued on 05-15-90	University of Kentucky	06-03-91	Tobacco plants genetically engineered to express tobacco vein mottling virus (TVMV) and tobacco etch virus resistance.	Fayette County, Kentucky.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA

Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 3d day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–16400 Filed 7–9–91; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 91–090]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that eight environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Givens, Program Assistant, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit number	Applicant	Date issued	Organism	Field test location
91–014–01	Rogers NK Seed Company.	06–04–91	Tomato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Yolo County, California.
91–014–02	Rogers NK Seed Company.	06–04–91	Tomato plants genetically engineered to express the gene encoding the coat protein of the tomato mosaic virus.	Yolo County, California.
91–050–02	Monsanto Agricultural Company.	06–05–91	Potato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis*.	Arostook County, Maine.
91–074–01	Upjohn Company	06–05–91	Corn plants genetically engineered to express tolerance to the herbicide glufosinate.	Kalamazoo County, Michigan; Isabela, Puerto Rico.
91–078–01	DNA Plant Technology Corporation.	06–05–91	Tomato plants genetically engineered to express the chitinase (*chiA*) gene to control fungal plant pathogens.	Contra Costa County, California.
91–074–03 Renewal of Permit 90–059–01, issued on 05–31–90	New York State Agricultural Experiment Station.	06–07–91	Cucumber plants genetically engineered to contain the cucumber mosaic virus (CMV) coat protein gene.	Ontario County, New York.
91–080–01	University of Wisconsin at Madison.	06–07–91	Alfalfa plants genetically engineered to express the beta-glucuronidase (GUS) gene and a kanamycin resistance gene.	Dane County, Wisconsin.
91–053–01	Upjohn Company	06–07–91	Tomato plants genetically engineered to express tobacco mosaic virus (TMV), or tomato mosaic virus (ToMV) coat protein; or expressing the TMV–U1 54 kD protein.	Kalamazoo County, Michigan.

Done in Washington, DC, this 3rd day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-16401 Filed 7-9-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 91-087]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is the second notice for producers of veterinary biological products and other interested persons that we are holding a third annual public meeting to discuss current regulatory and policy issues relating to the manufacture and distribution of veterinary biological products. The agenda includes but is not limited to program updates, autogenous biologics, pre- and post-licensing monitoring, international harmonization of regulation of veterinary biologics, in vitro potency testing, and an open discussion for presentation of comments by attendees.

PLACE, DATES AND TIMES OF MEETING: The third annual public meeting will be held in the Scheman Building at the Iowa State Center, Ames, Iowa 50011, on Thursday, August 15, 1991, from 8 a.m. to 5:30 p.m. and Friday, August 16, 1991, from 8 a.m. to 12 noon.

FOR FURTHER INFORMATION CONTACT: Ms. Lorie Lykins, Veterinary Biologics Field Operations, Biotechnology, Biologics and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 223 South Walnut Avenue, Ames, Iowa 50010, (515) 232-5785.

SUPPLEMENTARY INFORMATION: APHIS previously announced that it was holding its third annual meeting on veterinary biologics in Ames, Iowa, on August 15 and 16, 1991 (see 56 FR 6832, February 20, 1991). In its notice for the meeting, APHIS requested interested persons to submit topics to be included in the meeting's agenda. Based on the submissions that were received in response to this request, the agenda for the third annual meeting includes but is not limited to the following topics:

1. Veterinary Biologics update;
2. Veterinary Biologics Field Operations update;
3. National Veterinary Services Laboratories update;
4. Autogenous biologics;
5. Pre- and post-licensing monitoring;
6. Biotechnology issues;
7. International harmonization of veterinary biologic regulations;
8. Distribution and use of rabies vaccines;
9. In vitro potency testing; and
10. Open discussion.

During the "open discussion" portion of the meeting attendees will have the opportunity to present their views on any matter concerning the APHIS veterinary biologics program. Comments may be either impromtu or prepared. Persons wishing to make a prepared statement should indicate their intention to do so at the time of registration, by indicating the subject of their remarks and the approximate time they would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

Registration forms, lodging information, and copies of the complete agenda may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT. Advance registration is required. The deadline for registration is July 29, 1991.

Done in Washington, DC, this 3d day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-16399 Filed 7-9-91; 8:45 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

Child and Adult Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1991-June 30, 1992

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1991-June 30, 1992.

As provided for under the National School Lunch Act and the Child Nutrition Act of 1966, all rates in the CACFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 10, 1990 (for the period July 1, 1990-June 30, 1991).

ALL STATES EXCEPT ALASKA AND HAWAII

Meals Served in CENTERS—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts:	
Paid:	$.1850

ALL STATES EXCEPT ALASKA AND HAWAII—Continued

Free	.9275
Reduced	.6275
Lunches and Suppers:	
Paid [1]	$.1600
Free [1]	1.6625
Reduced [1]	1.2625
Supplements:	
Paid	$.0425
Free	.4575
Reduced	.2275
Meals Served in DAY CARE HOMES— Per meal Rates in Dollars or Fractions thereof:	
Breakfasts	$.7850
Lunches and Suppers	1.4225
Supplements	.4250
ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	$63
Next 150 day care homes	48
Next 800 day care homes	38
Additional day care homes	33

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

ALASKA

Alaska—Meals Served in CENTERS—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	
Paid	$.2625
Free	1.4650
Reduced	1.1650
Lunches and Suppers:	
Paid [1]	$.2575
Free [1]	2.6900
Reduced [1]	2.2900
Supplements:	
Paid	$.0675
Free	.7400
Reduced	.3700
Alaska—Meals Served in DAY CARE HOMES—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	$1.2350
Lunches and Suppers	2.3075
Supplements	.6875
Alaska—ADMINISTRATIVE REIMBURSEMENT Rates for Sponoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	$103
Next 150 day care homes	78
Next 800 day care homes	61
Additional day care homes	54

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value fo commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

The new payment rates for Hawaii are as follows:

HAWAII

Hawaii—Meals Served in CENTERS—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts:	
Paid	$.2075
Free	1.0750
Reduced	.7750
Lunches and Suppers:	
Paid [1]	$.1875
Free [1]	1.9450
Reduced	1.5450
Supplements:	
Paid	.0500
Free	.5350
Reduced	.2675
Hawaii—Meals Served in DAY CARE HOMES—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	$.9100
Lunches and Suppers	1.6650
Supplements	.4975
Hawaii—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	$74
Next 150 day care homes	57
Next 800 day care homes	44
Additional day care homes	39

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 3.4 percent increase during the 12-month period May 1990 to May 1991 (from 133 in May 1990 to 137.5 in May 1991) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 5.0 percent increase during the 12-month period May 1990 to May 1991 (from 129.2 in May 1990 to 135.6 in May 1991) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistcs of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1759(a), 1766) and section 4(b)(1)(B) of the Child Nutrition Act of 1966 as amended, (42 U.S.C. 1773b).

Dated: July 1, 1991.

[FR Doc. 91-16316 Filed 7-9-91; 8:45 am]

BILLING CODE 3410-30-M

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "'national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescibed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1991 through June 30, 1992.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Proceesed Milk, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1991 to June 30, 1992, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 11 cents. This reflects no change over the current reimbursement rate because the Producer Price Index for Fresh Processed Milk from May 1990 to May 1991 (from a level of 120.9 in May 1990 to 119.2 in May 1991) did not change significantly enough to trigger a change in the reimbursement rate.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors, and to the Maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 1991 through June 30, 1992 reflect a 3.4 percent increase in the Price Index during the 12-month period May 1990 to May 1991 (from a level of 133.0 in May 1990 to 137.5 in May 1991).

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced-price lunches. The section 11 National Average Payment Factor for each reduced-price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966, as amended, establishes National Average Payment Factors for free, reduced-price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1992. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced-price lunches in School Year 1989–90, the payments are: *Contiguous States*—16.00 cents, maximum rate 24.00 cents; *Alaska*—25.75 cents, maximum rate 37.75 cents; *Hawaii*—18.75 cents, maximum rate 27.75 cents.

In school food authorities which served 60 percent or more free and reduced-price lunches in School Year 1989–90, payments are: *Contiguous States*—18.00 cents, maximum rate 24.00 cents; *Alaska*—27.75 cents, maximum rate 37.75 cents; *Hawaii*—20.75 cents, maximum rate 27.75 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch 150.25 cents, reduced-price lunch 110.25 cents; *Alaska*—free lunch 243.25 cents, reduced-price lunch 203.25 cents; *Hawaii*—free lunch 175.75 cents, reduced-price lunch 135.75 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast 92.75 cents, reduced-price breakfast 62.75 cents, paid breakfast 18.50 cents; *Alaska*—free breakfast 146.50 cents, reduced-price breakfast 116.50 cents, paid breakfast 26.25 cents; *Hawaii*—free breakfast 107.50 cents, reduced-price breakfast 77.50 cents, paid breakfast 20.75 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast 110.25 cents, reduced-price breakfast 80.25 cents, paid breakfast 18.50 cents; *Alaska*—free breakfast 174.75 cents, reduced-price breakfast 144.75 cents, paid breakfast 26.25 cents; *Hawaii*—free breakfast 127.75 cents, reduced-price breakfast 97.75 cents, paid breakfast 20.75 cents.

Payment Chart

The following chart illustrates: The lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS: MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES—EXPRESSED IN DOLLARS OR FRACTIONS THEREOF

[Effective from July 1, 1991–June 30, 1992]

National school lunch program *	Less than 60%	60% or more	Maximum rate
Contiguous States:			
Paid	$.1600	$.1800	$.2400

SCHOOL PROGRAMS: MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES—EXPRESSED IN DOLLARS OR FRACTIONS THEREOF—Continued

[Effective from July 1, 1991–June 30, 1992]

National school lunch program *	Less than 60%	60% or more	Maximum rate
Reduced-price	1.2625	1.2825	1.4325
Free	1.6625	1.6825	1.8325
Alaska:			
Paid	.2575	.2775	.3775
Reduced-price	2.2900	2.3100	2.5575
Free	2.6900	2.7100	2.9575
Hawaii:			
Paid	.1875	.2075	.2775
Reduced-price	1.5450	1.5650	1.7400
Free	1.9450	1.9650	2.1400

School breakfast program	Non-severe need	Severe need
Contiguous States:		
Paid	$.1850	$.1850
Reduced-price	.6275	.8025
Free	.9275	1.1025
Alaska:		
Paid	.2625	.2625
Reduced-price	1.1650	1.4475
Free	1.4650	1.7475
Hawaii:		
Paid	.2075	.2075
Reduced-price	.7750	.9775
Free	1.0750	1.2775

Special milk program	All milk	Paid milk	Free milk
Pricing programs without free option	$.1100	N/A	N/A
Pricing programs with free option	N/A	.1100	Average cost ½ pint milk
Nonpricing programs	.1100	N/A	N/A

* Payments listed for Free & Reduced-Price Lunches include both sections 4 and 11 funds.

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773).

Dated: July 1, 1991.

George A. Braley,

Acting Administrator.

[FR Doc. 91–16317 Filed 7–9–91; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Lake Creek Timber Sale, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for timber harvest in the Lake Creek Planning Area. The purpose of the EIS will be to develop and evaluate a range of alternatives, including a no action alternative, which respond to the key issues generated during the scoping process. This proposal is in accordance with directions set forth in the 1990 Umpqua National Forest Land and Resource Management Plan which provides for timber harvest within applicable standards, guidelines, and management prescriptions; and will be in compliance with the 1990 Umpqua National Forest Final Environmental Impact Statement and the 1988 Final Environmental Impact Statement for Managing Competing and Unwanted Vegetation. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by August 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to J. Dan Schindler, District Ranger, Diamond Lake Ranger District, HC 60 Box 101, Idleyld Park, Oregon 97447.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Mike Hupp, Timber Management Assistant, Diamond Lake Ranger District, HC 60 Box 101, Idleyld Park, Oregon 97447; phone (503) 672–5469.

SUPPLEMENTARY INFORMATION: The Lake Creek EIS Planning Area includes the Sheep and Lake Creek Watershed Analysis Areas (WAAs) located within the Lemolo Lake Resource Scheduling Area (RSA) of the Umpqua National Forest. The Lake Creek planning area encompasses about 21,800 acres of National Forest land west of the Cascade crest, and north of Diamond Lake and Mt. Bailey. The planning area is located in all or portions of section 36, T26S, R5E; sections 31 and 32, T26S, R5.5E; sections 1, 12, 13, 24, 25, 26, 34, 35, and 36, T27S, R5E; sections 4–10, 13–30, and 32–36, T27S, R.5E; sections 1, 2, 3, 11, 12, and 13, T28S, R5.5E; sections 17, 20, 29, and 32, T27S, R6E; and sections 6 and 7, T28S, R6E, Willamette Meridian, Douglas Country, Oregon.

The 1990 Umpqua National Forest Land and Resoruce Management Plan allocates the Lake Creek EIS Planning Area into Management Areas 1, 2, 4, 5, and 10. Management Area 1 focuses upon providing opportunities for unroaded recreation primarily in a semiprimitive environment. Management Area 2 provides an appropriate environment for concentrated developed recreation activities in the area immediately surrounding Diamond Lake. Management Area 4 preserves the natural character of the Mt. Thielsen Wilderness in a manner consistent with the Wilderness Act of 1962 and the Oregon Wilderness Act of 1984. Management Area 5 manages the Oregon Cascades Recreation Area consistent with the intent of the Oregon Wilderness Act of 1984. Management Area 10 is primarily devoted to producing timber on a cost efficient, sustainable basis consistent with other resoruce objectives. About 14,000 acres of the planning area are included in the Mt. Thielsen Wilderness and the Oregon Cascades Recreation Area.

The preliminary key issues identified to date include the following:

1. Potential effects on the Northern Spotted Owl and it's nesting habitat. Several stands exhibit old-gowth characteristics.

2. Potential effects to the roadless nature of the Mount Bailey Roadless Area.

3. Potential effects on the visual quality of the area.

4. Potential effects on elk calving and travel corridors, and pine marten habitat.

5. Economic impacts of harvesting unroaded mountain hemlock ecotype.

6. The harvest of timber stands heavily infected with root disease.

7. Potential effects in the Lake Creek corridor including: riparian habitat, water quality (fisheries), wildlife travel corridors, recreation use.

8. Potential effects on historic trap lines in the area.

9. Potential effects on and improvements to recreation opportunities in the area, primarily snowmobile and cross-country ski routes.

The proposed action is to harvest 266 acres containing 10.3 million board feet of timber (gross). New roads may need to be constructed to access harvest areas. Logging systems would be primarily ground based (loader, cat, or skidder) with some units being skyline logged. Silvicultural prescriptions would consist of a combination of seed tree, shelterwood, clearcut, partial cut, and overstory removal. Uneven-aged management will be considered as an alternative.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes the following:

1. Identification of issues.
2. Identification of key issues to be analyzed in depth.
3. Elimination of insignificant issues, issues which have been covered by a relevant previous environmental process, and issues that could be successfully mitigated.
4. Exploration of additional alternatives based on the key issues identified during the scoping process.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

Two open houses will be held to allow public review of the information gathered to date: Diamond Lake Information Center on July 6, 1991 from 12 until 6 p.m.; and the Umpqua National Forest Supervisor's Office in Roseburg, Oregon on July 10, 1991 from 3 until 8 p.m.

Licenses and permits required to implement the proposed action are already held by the Forest Service who is the lead agency for this project.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1993. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** It is very important that those interested in the management of the Umpqua National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Hertages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by September, 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS; and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Lee F. Coonce, Forest Supervisor, Umpqua National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: June 27, 1991.

Lee F. Coonce,

Forest Supervisor.

[FR Doc. 91-16336 Filed 7-9-91; 8:45 am]

BILLING CODE 3410-11-M

Undercat/Panther Timber Sales, Wenatchee National Forest, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal for the Undercat/Panther Timber Sales. The project is located within the Entiat Roadless Area in the Cougar Creek drainage on the Entiat Ranger District of the Wenatchee National Forest. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction levels. The alternatives will include a no action alternative, involving no harvest or construction, and additional alternatives to respond to issues generated during the scoping process. The proposed project will be in compliance with the direction in the Wenatchee National Forest Land and Resource Management Plan which provides the overall guidance for management of the area and the proposed projects for the next ten years. Undercat is scheduled for a fiscal year 1992 timber sale and Panther is scheduled for a fiscal year 1993 timber sale. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by August 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Karin Whitehall, District Ranger, Entiat Ranger District, P.O. Box 476, Entiat, WA 98822.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Darlene Robbins, Presale Forester, Entiat Ranger District, P.O. Box 476, Entiat, WA 98822; phone (509) 784-1511.

SUPPLEMENTARY INFORMATION: The Undercat Timber sale is displayed in the Wenatchee National Forest Land and Resource Management Plan, page A-28, and the Panther Time Sale on page A-42. The major issues that have been identified to date reflect timber harvest, water quality, noxious weeds, and soil stability concerns. Recreational concerns deal in particular with road management and trail use issues. This proposed sale area is within the Entiat Roadless Area. Approximately 3 million board feet of timber are proposed for harvest in the Undercat timber sale on 160 acres of clearcuts averaging approximately 16 acres each, and approximately 1.5 miles of road construction. The Panther sale proposes to harvest 4 million board feet on 225 acres of clearcuts averaging 15 acres each in decadent root-rot infected stands, and involves approximately 2.0 miles of road construction. Some

forested areas in the planning area are unoccupied spotted owl habitat outside of Habitat Conservation Areas.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1991.

At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible.

The final EIS is scheduled to be completed by December 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Karin Whitehall, District Ranger, Entiat Ranger District, Wenatchee National Forest, is the responsible official. As the responsible official she will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR Part 217).

Dated: June 26, 1991.

Karin Whitehall,

District Ranger.

[FR Doc. 91-16337 Filed 7-9-91; 8:45 am]

BILLING CODE 3410-11-M

ARCTIC RESEARCH COMMISSION

Arctic Research Commission Meeting

Notice is hereby given that the United States Arctic Research Commission will hold its 24th Meeting in Barrow, Alaska on August 5-6, 1991. On Monday, August 5, a Public Meeting Session will be held starting at 1:15 p.m. in the Conference Room of the Arctic Slope Regional Commission in Barrow. On Tuesday, August 6, 1991, the 24th Meeting Business Session will convene at 8:30 a.m. The Commission will meet in Executive Session following the conclusion of the Public Meeting at 4:30 p.m. and following the business session at 11:30 p.m. Agenda items include: (1) Chairman's Report; (2) Comments from the Interagency Arctic Research Policy Committee; (3) Comments from the Alaska Congressional Delegation; (4) Comments from the Arctic Research Consortium of the United States; (5) Status of International Arctic Activities; (6) Discussion of Arctic Energy Development Activities; and (7) Discussion of future Commission efforts. The Public Meeting will receive presentations on Arctic Oil development plans, environmental concerns and needed research.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission, 202-371-9631 or TDD 202-357-9867.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 91-16301 Filed 7-9-91; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

Petitions Have Been Accepted or Filing on the Dates Indicated From the Firms Listed Below

Firm name	Address	Date petition accepted	Product
Becker Manufacturing Co., Inc.	P.O. Box 2277, City of Industry, CA 91746	10/01/90	Manufacturing lighting fixtures.
Cambridge Tool & Mfg. Co., Inc.	Faulkner Street, North Billerica, MA 01862	10/04/90	Parts for military, medical, auto, computor, and lighting and electric fixtures.
John Royle & Sons	1000 Cannonball Road, Pompton Lakes, NJ 07442.	10/04/90	Extrusion machinery.
Dyco Electronics, Inc	RD#2, Hornell Industrial Park Rd., Hornell, NY 14843.	10/04/90	Electronic transformers.
Ray Gaber Company	800 Penn Avenue, Pittsburgh, PA 15222	10/05/90	Jewelry.
PA Plastics, Inc.	300 Ormond Street, Rochester, NY 14605	10/05/90	Plastic panels, covers and bins for X-ray film processors.
Allstate Tool & Die, Inc	15 Coldwater Crescent, Rochester, NY 14624	10/09/90	Copier shafts and optical housings.
Vinyl Products Mfg., Inc./Plastic Welders Mfg. Inc.	123 West 2nd Street, Carson City, NV 89701	10/15/90	Waterbed mattresses.
Summit Fashions, Inc	220 Colfax, El Paso, TX 79905	10/16/90	Men's and women's pants and shirts and women's skirts and blazers.
Telos Labs Inc	51 Whitney Place, Fremont, CA 94539	10/19/90	Misc.—Air monitoring system to detect and measure toxic gas.
Libaire Leather, Inc	2100 Fifth Street, Berkeley, CA 94710	10/24/90	Handbags of leather.
Justesen Industries, Inc.	1090 Yew Avenue, Blaine, WA 98230	10/30/90	Steel firescreen mesh, aluminum mesh
Colony Corporation	100 Highland Avenue, Putnam, CT 06260	10/31/90	Window shades, custom window coverings.
Nylon Net Company	P.O. Box 592, Memphis, TN 38101-0592	10/31/90	Textiles—Rope and twine of nylon.
Hypro Corporation	375 Fifth Avenue, NW, New Brighton, MN 55112	11/05/90	Fluid pumps.
Raja Industries, Inc	Rt. 4 Chulio Road/P.O. Box 5106, Rome, GA 30161.	11/07/90	Apparel and accessories—Work gloves.
Demis Products, Inc	2000 Jabco Drive/P.O. Box 348, Lithonia, GA 30058.	11/07/90	Misc.—Craft and hobby items.
VST Handbags & Accessories, Inc	242 West 30th Street, 2nd Floor, New York, NY 10001.	11/08/90	Leather products—Leather handbags.
Lighting & Electronics, Inc	Market Street Industrial Park, Wappinger Falls, NY 12590.	11/08/90	Mfg. of steel, aluminum theatre, concert TV and video/film lighting.
Buglecraft, Incorporated	41-38 39th Street, Long Island City, NY 11104	11/08/90	Chafers used as buffet food service equipment and misc. metal bathroom accessories.
Schuler Subra, Inc., dba Eskay Fabricating Company.	83 Doat Street, Buffalo, NY 14211	11/08/90	Mfg. counters, sinks, range hoods.
Victor Insulators, Inc	280 Maple Street, Victor, NY 14564	11/13/90	Electronics—Porcelain insulators.
Sonolite Plastics Corporation	10 Fernwood Avenue, Gloucester, MA 01930	11/14/90	Misc.—Plastic components for computer and electronic hardware, medical hardware and instruments.
Dickson/Unigauge, Inc	930 Sough Westwood Avenue, Addison, IL 60101.	11/14/90	Misc.—Environmental industrial instrumentation.
P.E. White and Son, Inc	13435 South Broadway, Los Angeles, CA 90061	11/14/90	Computer parts, lighting parts, diesel engine parts for trucks and stove parts.
Mastertech Plastics, Inc	1138 West Watkins, Phoenix, AZ 85007	11/19/90	Computer parts, electrical connectors, aircraft engine parts, missile parts, plastic bottles.
Silicon Metaltech Inc	100 4th Street, Rock Island, WA 98850	11/29/90	Misc.—Silicon, ferrosilicon, silica rock and fume.
Milton Shirt Co. Inc	56 Harvester Avenue, Batavia, NY 14020	11/29/90	Apparel—Shirts, jackets, pants for men.
Jack Curtis Whittiker/Circle J.W. Products, Inc.	4240 South 36th Place, Phoenix, AZ 85040	11/30/90	Jewelry—Design is produced, sample is manufactured.
S-T Industries, Inc	301 Armstrong Boulevard North, St. James, MN 56081.	12/04/90	Precision measuring tools of forged steel and shaped sheet metal.
Lincoln Organ Company (the)	4221 N.W. 37th Street, Lincoln, NE 68524	12/04/90	Misc.—Pipe organs.
Thomas Smith Company, Inc	288 Grove Street, Worcester, MA 01613	12/05/90	Computer hardware.
Baldt, Inc	Butler & 9th Streets, Chester, PA 19013	12/06/90	Marine anchors, anchor chain and connecting hardware.
Quali-Tech, Inc	318 Lake Hazeltine Drive, Chaska, MN 55318	12/07/90	Animal feed ingredients, flavors, and medical additives and human food flavors and additives.
Hertzler Enterprises, Inc	1301—12th Street NW., Albuquerque, NM 87104	12/07/90	Ammunition.
Rome Manufacturing Co	208 East Second Ave., P.O. Box 191, Rome, GA 30161.	12/07/90	Men's and women's cotton slcaks and skirts.
New Mexico Wineries, Inc.	P.O. Box 1263, Mesilla, NM 68046	12/10/90	Grapes for making red and white wine.
Photo Control Corporation	4800 Quebec Avenue North, Minneapolis, MN 55428.	12/10/90	Power supplies and lampheads to be used with professional photography.
A. Lunt Design, Inc	5745 Big Tree Road, Orchard Park, NY 14127	12/10/90	Baby shirts, buntings, receiving blankets and bassinet sheets.
Rand Machine Products, Inc	2072 Allen Street Extension, Falconer, NY 14733.	12/10/90	Hydrolic shock absorbers, metal busings pipe line couplings, nuts and bolts for metal furniture.
Rogan Corporation	3455 Woodhead Drive, Northbrook, IL 60062-1813.	12/12/90	Plastic knobs and dials.
Chicago Precision Products	1451 Lunt Avenue, Elk Grove, IL 60007	12/19/90	Steel screw machine products, such as drive shafts for small motors.
Isk, Inc., dba Kass & Company, Inc.	3829 South Broadway, Los Angeles, CA 90037	12/21/90	Women's and children's shirts, skirts, slack, vests, etc.
Engineering Development, Inc.	4850 North Park Drive, Colorado Springs, CO 80907.	12/24/90	Heating/cooling vent systems.

Firm name	Address	Date petition accepted	Product
Slumbertogs, Inc	135 Madison Avenue, New York, NY 10016	12/28/90	Women's cotton and polyester sleepwear and children's polyester sleepwear.
Chicago Tool & Engineering Company	8383 South Chicago Avenue, Chicago, IL 60617	12/28/90	Cast iron machines vises and rotory tables.
Jenson Manufacturing, Inc	420 Quequechan Street, Fall River, MA 02723	01/14/91	Skirts and pants of wool, wool blends, cotton and linen.
King Leather Products, Inc	144 Hayward Avenue, Brockton, MA 02403	01/04/91	Leather sandles for mean and women and weight lifting belts made of leather and footwear components.
Samson Weight Training Equipment Company	2901 Armory Road, P.O. Box 353, Las Cruces, NM 88005.	01/09/91	Exercise/fitness machines.
Cyanotech Corporation	P.O. Box 4384, Kailua-Kona, HI 96745	01/09/91	Spirulina—High value chemicals, nutritional additives and related products.
Tasco Corporation	1 Hicks Avenue, Newton, NJ 07860	01/15/91	Parts and components for vibratory equipment used in mining and drilling—machinery and equipment.
Estad Products, Inc	800 S. Gilbert, Danville, IL 61832	01/15/91	Steel stamped drum plugs, flanges, joint nails, anid wardrobe hanger bars.
Omak Wood Products, Inc	Route 2, Box 54, Omak, WA 98841-9609	01/19/91	Wood.
Asheboro Hosiery Mills, Inc	P.O. Box 550, 139 S. Church St., Asheboro, NC 27203.	01/31/91	Nylon and spandex panty hose, knee hi and stockings.
Seminole Manufacturing Company	605 17th Street South, P.O. Box 391, Columbus, MS 39701.	02/01/91	Apparel Mfg.—Men's trousers.
Arch Knitting Co., Inc	1801 Fairway Road, Asheboro, NC 27203	02/04/91	Apparel—Ladies panties, hosiery, tights, stocking, leotards.
Composite Shower Pan, Inc	355 North Glendale Blvd., Box 26188, Los Angeles, CA 90026.	02/04/91	Shower pan liners.
Independent Leather Mfg. Corporation	315 S. Main Street, Gloversville, NY 12079	02/05/91	Mfg. process of tanning and finishing fine suede and leather.
Crary Company	237 N.W. 12th Street, Box 849, W. Fargo, ND 58078.	02/08/91	Materials to process combine reels, sickle bar cutting systems, snow throwers and shredders.
Assembly Technology Corporation	1100-Delaware Avenue, Longmont, CO 80501	02/08/91	Printed circuit boards.
Colonial Bronze Company, Inc	541 Winsted Road, Torrington, CT 06790	02/08/91	Brass knobs and brass pulls.
Milham Products Company, Inc	39 Broad Street, Quincy, MA 02269	02/08/91	Curtains, bedspreads and accessories.
Schmoker's, Inc	12250 Spromberg Canyon Road, Leavenworth, WA 98826.	02/11/91	Firewood.
Twin City International	795 Wurlitzer Drive, North Tonawanda, NY 14120.	02/11/91	Betascopes, autotest and X-ray thickness measuring instrument.
Superior Technology, Inc	215 Tremont Street, Rochester, NY 14608	02/11/91	Screws, washers, shafts and dowel pins.
Port Austin Level & Tool Mfg. Co	P.O. Box 365, Port Austin, MI 48467	02/19/91	Carpenter's and mason's levels of Honduras mahogany and aluminum.
Rockmart Manufacturing, Inc	136 Elm Street, Rockmart, GA 30153	02/22/91	Apparel—Women's slacks.
ABC Fashions Company	33-49 Mulberry Street, Middletown, NY 10940	02/25/91	Children's and women's sweatsuits of cotton and polyester.
Spring City Electrical Manufacturing Company	Hall & Main Streets, Spring City, PA 19475	02/25/91	Metal products—Iron and steel lamp posts.
International Advanced Materials	2 North Cole Avenue, Spring Valley, NY 10977	02/27/91	High purity metals, alloys, compounds, intermetallics and cermets.
Big Boy Products, Inc	2666 Country Club Road, Warsaw, IN 46580	03/01/91	Hand tire pumps.
Priority Products, Inc	1111 Virginia Avenue, Kansas City, MO 64106	03/01/91	Steel load lock (versa-bar).
Clements Manufacturing Company, Inc	P.O. Box 37, Deckerville, MI 48427-0037	03/05/91	Wiring harness for the automotive industry.
Thrustmaster of Texas, Inc	12227-K FM 529, Houston, TX 77041	03/05/91	Hydraulically powered marine propulsion units.
Analog-Digital Technology, Inc	140 W. Main Street, Rochester, NY 14614	03/07/91	Electronic interface instruments.
Red Fox Apparel, Inc	613 E. Carolina Ave., P.O. Box 176, Hartsville, SC 29550.	03/07/91	Apparrel—Women's skirts, shorts and slacks.
Hamilton Digital Controls, Inc	2118 Beechgrove Place, Utica, NY 13501-1798	03/11/91	Electronics—Magnetic recording heads.
Y and W Sportswear	P.O. Box 476—Frank Road, Fitzgerald, GA 31750.	03/12/91	Apparel—Men's slacks.
Colt Enterprises, Inc	500 North Bois d Arc Avenue, Tyler, TX 75702	03/14/91	Apparel—Men's and women's jeans.
E.F. Zuber Engineering & Sales, Inc	800 West 79th Street, Minneapolis, MN 55420	03/18/91	Meat and poultry processing equipment.
Hardware & Industrial Tool Company, Inc	One Commerce Drive, Delanco, NJ 08075	03/18/91	Gardening tools including weeders, cultivators, pruners, trowels, of metal components.
Standard Industries, Inc	P.O. Box 27500, San Antonio, TX 78227	03/19/91	Lead/acid batteries for vehicle and lawn and garden markets.
Sloan's Trans-Comm. Inc	3300 E. 43rd Avenue, Denver, CO 80216	03/21/91	Torque converters.
Repro Technology, Inc	1525 Airport Road, Conroe, TX 77301	03/22/91	Engineering copiers capable of producing bluelines, reverse copies, sepias and film copies.
Purdy Corporation (The)	586 Hilliard Street, Manchester, CT 06040	03/26/91	Parts used in jet engines of an aircraft such as shafts, gears, valves guides and etc.
Jonbil, Inc	P.O. Box 37, Chase City, VA 23924	03/26/91	Apparel—Men's and women's jeans.
Huot Manufacturing Company	550 N. Wheeler Street, St. Paul, MN 55104	04/01/91	Sheet metal twist drill index cases and dispensing cabinets.
Benay-Albee Novelty Company, Inc	4710 Roanoke Avenue, Newport News, VA 23607.	04/02/91	Apparel—Novelty hats.
M.P.S. Corporation	2221 Guy Brown Drive, Decatur, IN 46733	04/03/91	Manufactures laminated wood products.
Bay Precision, Inc	P.O. Box 156, Menominee, MI 49858	04/04/91	DC motors with brushes of an output of 18.65 or more but not exceeding 37.5 W.
Simula, Inc	10016 South 51st Street, Phoenix, AZ 98044-5299.	04/04/91	Helicopter seating systems.
Graphic Metals, Inc	1300 N. McLellan Street, Bay City, MI 48707	04/05/91	Stamped metal parts for automobiles and appliances.

Firm name	Address	Date petition accepted	Product
Woodings-Verona Tool Works, Inc	45 Jones Street, P.O. Box 126, Verona, PA 15147-0126.	04/05/91	Forged hand tools and rail anchors.
Norsal Industries, Inc	85D Hoffman Lane South, Central Islip, NY 11722.	04/05/91	Microwave communication components.
Fidelity Sportswear, Inc	165 Bow Street, Everett, MA 02149	04/08/91	Apparel—Men's and women's leather and wool coats.
Friedrichs Enterprises, Inc., d/b/a Amkey, Inc	One Aegean Drive, Methuen, MA 01844	04/08/91	Computer equipment—keyboards.
Carbone Sheet Metal Corporation	240 Marginal Street, Chelsea, MA 02150	04/08/91	M&E—Restaurant equipment, sinks, counter tops, range hoods, utensil holders, shelves, tables, etc.
Louisville Stoneware Company	731 Brent Street, Louisville, KY 40204	04/08/91	Dinnerware, figurines, vases, planters and microwaveable food containers.
Falchi Enterprises, Inc	31-00 47th Avenue, Long Island, NY 11101	04/08/91	Leather handbags and leather belts.
Major Liting, Inc	9 Havens Street, Elmsford, NY 10523	04/08/91	Light fixtures for commercial and residential construction.
Diversified Control Systems, Inc	645 Persons Street, E. Aurora, NY 14052	04/08/91	Control panels, operation consoles, data acquisition systems and a.c. and d.c. drive controls.
Apertus Technologies, Inc	7275 Flying Cloud Drive, Eden Prairie, MN 55344.	04/17/91	Producer of high speed printers, work stations and display terminals.
Hi-Tech Plating & Shielding, Inc	4313 W. Van Buren, Phoenix, AZ 85043	04/17/91	Aircraft body, engine parts and computer parts.
Extraction Systems, Inc	1220 South Lyon Street, Santa Ana, CA 92705	04/17/91	Soil and chemical extraction systems.
Waytec Electronics Corp	1104 McConville Road, Box 11765, Lynchburg, VA 24506.	04/25/91	Electronics—Printed circuit boards.
Warren E. Collins, Inc	200 Wood Road, Braintree, MA 02184	04/25/91	Machinery and equipment—Computerized equipment to test lung volume and function.
Eagle Grinding Wheel Corp	2519 W. Fulton St., Chicago, IL 60612	04/25/91	Miscellaneous—Grinding wheels and stones of alum. oxide and silcon carbide abrasives
Dalton Gear Company	212 Colfax Avenue North, Minneapolis, MN 55405.	05/01/91	Parts for industrial and heavy machinery.
Think Country Inc	95 Monocracy Blvd., B-7, Frederick, MD 21701	05/01/91	Giftsware/crafts.
Trimode Engineering Inc	500 N. Pontiac Trail, Walled Lake, MI 48390	05/01/91	Jigs and fixtures for metal working machine tools.
Plastic Assembly Corporation	Molumco Industrial Park, Ayer, MA 01432	05/02/91	Pumpkin lights, pumpkin containers, glow lights.
John Roberts, Inc	Biddeford Industrial Park, Biddeford, ME	05/02/91	Manufacturer of men's suits and sportcoats and women's coats and skirts.
Elmer Manufacturing Company, Inc	50 Briad Street, Elmer, NJ 08318	05/03/91	Apparel—Gowns for bridemaids.
Hauser Corporation	3268 Blue Heron View, Macedon, NY 14502	05/03/91	Miscellaneous—Fuser rollers for copiers, gears for auto transmissions and housing for water pumps.
Priority Products, Inc	1111 Virginia Ave., Kansas City, MO 64106	05/03/91	Metal products—Steel load locks.
Instant Products, Inc	4619 Louisville Ave., Louisville, KY 40209	05/06/91	Plastic products—Incapsulated foam toys and plastic tab handlers.
Kenmar Manufacturing Company, Inc	2626 N. Martha Street, Philadelphia, PA 19125	05/06/91	Metal products—Metal caulk guns.
Astro Flight, Inc	13311 Beach Avenue, Venus, CA 90292-5621	05/07/91	Electronics—Electric motors, charger units, electronic units.
M.W. Carr and Company, Inc	373 Highland Ave., Somerville, MA 02144	05/08/91	Miscellaneous—Metal and wood photo frames.
S&J Paper Converting, Inc	123 W. Woodruff Ave., Toledo, OH 43624	05/08/91	Miscellaneous—Paper product, i.e., index cards and file folders.
Unified Sports, dba Jayfro Corp	976 Hartford Turnpike, Waterford, CT 06385	05/08/91	Sports equipment.
South Bend Lathe, Inc	400 W. Sample Street, South Bend, IN 46625	05/08/91	Machinery and equipment—Latches, drilling and taping machine, deburring and deflashing machine, grinding machine.
High Country Contacts, Inc	685 Industrial Blvd., Delta, CO 81416	05/09/91	Electronics—Motor starters, high voltage parts and shunts.
JWR Exploration, Inc	2929 Briar Park, Ste 214, Houston, TX 77042	05/09/91	Oil and natural gas exploration.
Universal Data Research, Inc	9840 Main Street, Clarence, NY 14031	05/14/91	Circuit boards for personal computers and computer software.
Clements Manufacturing Company, Inc	2381 Black River St., Box 37 Deckerville, MI 48427-0037.	05/14/91	Wire harnesses for ignition systems.
Adinoff, Inc., dba Adin of California	4094 Glencoe Avenue, Marina del Rey, CA 90292.	05/17/91	Screen printed products, sweatshirts, tee shorts, aprons, tote bags and sport bags.
Production Mold, Inc	2112 Leota Street, Huntington, Park, CA 90255	05/17/91	Engine parts for pleasure boats, hardware and plumbing supplies.
Deltrol Corporation	2745 South 19th Street, Milwaukee, WI 53215	05/23/91	Relays, solenoids, timers, and bushings of machined steel.
Charles Pointe, Ltd	120 Glasgow Street, Clyde, NY 14433	05/28/91	Leather belts.
Fil-Coil Company, Inc	800 Axinn Avenue, Garden City, NY 11530	06/03/91	Electronic filters for power lines and communications systems.
FTS Systems	Box 185, Route 209, Stone Ridge, NY 12484	06/04/91	Manufactures low temperature refrigeration systems.
Mid West Quality Gloves, Inc	P.O. Box 260, Chillicothe, MO 64601	06/05/91	Leather work gloves.
Riehle Manufacturing Company	5264 Telegraph Road, Toledo, OH 43612	06/05/91	Dies for die casting aluminum and mold frames for molding aluminum.
Classic Player Piano Corporation	Quaker Drive, Seneca, PA 16346	06/06/91	Player pianos made from hardwood, acoustic pianos.
Trek Outdoor Products, Inc	8355 NE Loughrey, Indianola, WA 98342	06/06/91	Waders.
Morgan Shirt Corporation	Box 867, Morilla Park, Morgantown, WV 26505	06/06/91	Men's shirts and women's blouses.
V.H. Salas & Associates	301 Bland Road, San Antonio, TX 78212	06/06/91	Fine furniture and architectural mill work.
Plummer Precision Optics	601 Montgomery Avenue, Pennsburg, PA 18073	06/07/91	Precision optics and optical assemblies.
Maytown Shoe Manufacturing Company, Inc	Queen & Elizabeth Streets, Maytown, PA 17550	06/07/91	Men's and women's shoes.

Firm name	Address	Date petition accepted	Product
Advertising Specialties Corporation	2910 Glanzman Road, Toledo, OH 43614	06/07/91	Women's dresses, suits and pants of man-made fibers.
Eisinger Smith	15985 S. Golden Smith, Golden, CO 80401	06/10/91	Golf sets and money holders.
Barnett Robinson, Inc	342 Madison Avenue #1905, New York, NY 10173-0002.	06/11/91	Manufacturing of precious stone and diamond jewelry.
Flexovit USA, Inc	1305 Eden Evans Road, Angol, NY 14006-9733	06/11/91	Abrasive grinding wheels.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 4015A, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 1, 1991.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 91-16276 Filed 7-9-91; 8:45 am]

BILLING CODE 3510-24-M

Foreign-Trade Zones Board

[Docket 37-91]

Proposed Foreign-Trade Zone—Toole County, Montana (Sweetgrass Port of Entry) Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Northern Express Transportation, Inc. (NETI) (a Montana non-profit corporation), also known as Northern Express Transportation Authority (NETA), requesting authority to establish a general-purpose foreign-trade zone at sites in Toole County, Montana, within the Sweetgrass Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 26, 1991. The applicant is authorized to make the proposal under section 30-15-101 of the Montana Code Annotated.

The proposed foreign-trade zone would involve 3 sites (51 acres) in Toole County: *Site 1* (8.65 acres) at the U.S. Canadian Border crossing on Interstate 15 in Sweetgrass, Montana; *Site 2* (10 acres) between the Burlington Northern Railroad Line and Interstate 15 in Sunburst, Montana; and, *Site 3* (31.76 acres) in Toole County along the Burlington Railroad Line at Shelby's southern city limits. NETI, which operates as the port authority (NETA) for the Shelby-Sweetgrass area, will be the operator of the proposed zone project based on agreements with each of the site owners.

The application contains evidence of the need for zone services in Toole County. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as electronic components, auto parts, fertilizers, food supplies, sporting equipment, pipe and other steel products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donald W. Myhra, District Director, U.S. Customs Service, North Central Region, 300 Second Avenue, South, Great Falls, Montana 59401; and Colonel Stewart Bornhoft, District Engineer, U.S. Army Engineer District, Omaha, 215 North 17th Street, Omaha, Nebraska 68102-4978.

As part of its investigation the examiners committee will hold a public hearing on July 26, 1991, at 9:00 a.m., Court Room, Toole County Courthouse, 226 First Street South, Shelby, Montana 59474.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by July 19, 1991. Instead of an oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through August 26, 1991.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Northern Express Transportation, Inc., 301 1st Street South, suite 3, Shelby, Montana 59474.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 1, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-16425 Filed 7-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 523]

Resolution and Order Approving With Restrictions the Applications of the Rickenbacker Port Authority for a Special-Purpose Subzone at the Wascator Commercial Washing Machine Plant in Richwood, OH; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Rickenbacker Port Authority, grantee of FTZ 138, filed with the Foreign-Trade Zones Board (the Board) on February 16, 1990, requesting special-purpose subzone status at

the commercial washing machine manufacturing plant of the Wascator Manufacturing Company, in Richwood, Ohio (Columbus area), the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal wold be in the public interest, provided approval is subject to certain restrictions, approves the application subject to the following restrictions: (1) Privileged foreign status shall be elected on foreign steel mill products prior to manipulation or manufacturing in the subzone, if the same items are being produced by a domestic plant; and (2) privileged foreign status shall be elected on any foreign merchandise that is subject to antidumping or countervailing duty orders at the time of admission to the subzone.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Richwood, OH

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Rickenbacker Port Authority, grantee of Foreign-Trade Zone No. 138, has made application (filed February 16, 1990, FTZ Docket 7–90, 55 FR 7752, 3/5/90) in due and proper form to the Board for authority to establish a special-purpose subzone at the commercial washing machine plant of Wascator Manufacturing Company in Richwood, Ohio;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restrictions in the resolution accompanying this action;

Now, Therefore, in accordance with the application filed February 16, 1990, the Board hereby authorizes the establishment of a subzone at the Wascator plant in Richwood, Ohio, designated on the records of the Board as Foreign-Trade Subzone 138A, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, to the restrictions in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 3rd day of July, 1991, pursuant to Order of the Board.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–16426 Filed 7–9–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 26, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on color television receivers, except video monitors, from Taiwan. The review covers seventeen manufacturers/exporters of this merchandise to the United States and the period April 1, 1988 through March 31, 1989 (fifth review).

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, we have changed the final results from those in the preliminary results of review.

EFFECTIVE DATE: July 10, 1991.

FOR FURTHER INFORMATION CONTACT: Philip C. Marchal, G. Leon McNeill, or Maureen A. Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 1990, the Department of Commerce (the Department), published in the **Federal Register** (55 FR 53023) the preliminary results of its administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18337, April 30, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22 (1990).

Scope of the Review

Imports covered by the review are shipments of color television receivers (CTVs), except for video monitors, complete or incomplete, from Taiwan. The order covers all CTVs regardless of tariff classification. Prior to January 1, 1989, the merchandise was classified under items 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270,

684.9275, 684.9655, 684.9656, 684.9658, 684.9660, and 684.9663 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under items 8528.10.80, 8529.90.15, and 8540.11.00 of the Harmonized Tariff Schedules (HS). TSUSA and HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers seventeen manufacturers/exporters of color television receivers, except for video monitors, from Taiwan, for the period April 1, 1988 through March 31, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by section 353.22(c) of the Commerce Regulations. We received comments from the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL–CIO–CLC, the Independent Radionic Workers of America, and the Industrial Union Department, AFL–CIO (the petitioners); Zenith Electronics Corp. (Zenith); and eight respondents: Action Electronics Co., Ltd. (Action), AOC International Inc. (AOC), Proton Electronic Industrial Co. (Proton), RCA Taiwan, Ltd. and Thomson Consumer Electronics, Inc. (RCA), Sampo Corp. (Sampo), Sanyo Electric (Taiwan) Co., Ltd. (Sanyo), Shin-Shirasuna Electric Corp. (Shirasuna), and Tatung Co. (Tatung).

We have corrected any clerical errors noted by the petitioners, Zenith, and respondents, and have addressed them specifically in this notice.

General Comments

Comment 1: Citing *Zenith Electronics Corp.* v. *United States*, 633 F. Supp. 1382 (CIT 1986), appeal dismissed, 875 F.2d 291 (Fed. Cir. 1989) (Zenith), and *Daewoo Electronics Co. Ltd.* v. *United States*, 712 F. Supp. 931 (Daewoo) (CIT 1989), Zenith argues that the Department's methodology for determining the amount of taxes to be added to United States price (USP) with respect to Taiwan taxes rebated or not collected by reason of exportation is incorrect. Zenith contends that the Department failed to measure the amount of tax "passed through" in the home market for purposes of this adjustment pursuant to 19 U.S.C. 1677a(d)(1)(C).

Action, AOC, Proton, Sampo, and Tatung support the Department's long-standing position that the antidumping law, properly interpreted, does not require measurement of the incidence of indirect taxes in the home market.

Department's Position: We do not agree with the Court in Zenith or Daewoo but have not had an opportunity to appeal the issue on its merits. Consistent with our long-standing practice, we have not attempted to measure the amount of tax "passed-through" to customers in the Taiwan home market. We do not agree that the statutory language limiting the amount of adjustment to the amount of the commodity tax "added to or included in the price" of CTV's sold in the Taiwan home market requires the Department to measure the incidence of tax "passed through" in the home market. We agree, however, that the amount of commodity tax rebated or not collected by reason of exportation of CTVs to the United States must be added to USP under the statute.

Comment 2: Zenith asserts that the Department's methodology in deriving a duty paying value (DPV), which functions as a base for the calculation of an imputed commodity tax, is incorrect. Zenith claims that the Department's calculated DPV for sales from a bonded factory is wrongly inflated since it includes elements such as U.S. selling, general and administrative (SG&A) expenses, U.S. profit, and U.S. antidumping duties. Zenith, by contrast, advocates the FOB price less U.S. duty of 5%, inland freight, foreign brokerage, etc., as DPV. Zenith also claims the Department has inflated DPV by including Taiwan import duties.

Action, AOC, Proton, Sampo, and Tatung assert that Zenith's proposed methodology for calculation of the commodity tax adjustment is inconsistent with the antidumping law and with Department practice, and should thus be rejected in its entirety.

These parties specifically criticize Zenith's methodology in several respects. First, they assert, Zenith's methodology is arbitrary in that it relies on FOB prices, which bear no relationship to the actual tax base used by the Taiwan authorities to assess the actual tax. Furthermore, for exporter's sales price (ESP) sales, these FOB prices are transfer prices, which are especially inappropriate. They argue that these FOB prices are only relevant for identical, or near-identical models sold out of a bonded warehouse, and are thus entirely inapplicable to sales from an unbonded warehouse, or for sales in which there is not an identical or near-identical model sold in the home market.

These respondents point out that FOB prices are also inappropriate because DPVs sometimes represent retail prices. Furthermore, they assert that Zenith's suggested FOB export prices often bear no relation whatsoever to the FOB prices charged by Taiwan producers on export shipments. They also assert that the actual DPV used by the Taiwan authorities is a standard that does not vary with each sale to each customer, as does Zenith's suggested FOB export price. Zenith's suggested FOB price is also inaccurate in that it is denominated in U.S. dollars, as opposed to New Taiwan dollars, and is thus further distorted by exchange rate fluctuations.

As an alternative, these respondents suggest a different methodology which uses actual home market DPVs as a point of departure. Action, AOC, Proton, Sampo, and Tatung suggest that, in order to estiamte the commodity tax that would have been collected on sales of U.S. merchandise, the Department begin with the actual DPV of the home market comparison model, whether that model is identical merchandise or simply a similar, comparable model.

If the home market comparison model is identical merchandise, these respondents suggest that the Department use that model's actual DPV. If the model is similar, they suggest that the Department take that model's DPV, ajdust it for differences-in-merchandise (difmer), and then use that adjusted DPV for derivation of the imputed U.S. commodity tax.

Finally, as regards Zenith's comment that the Department incorrectly uses a duty-burdened DPV, these respondents assert that the Department is in fact correct, since it is merely employing the formula used by the Taiwan authorities for deriving the DPV for home market sales from a bonded warehouse.

Department's Position: In our treatment of commodity tax, we are following prior practice in the television cases, particularly as established in Color Television Receivers, Except Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part, 55 FR 47093 (November 9, 1990) (Third Taiwan CTV Review), Comments 1 and 9; Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 56 FR 12701 (March 27, 1991) (Fifth Korean CTV Review), Comment 1.

The tax base in Taiwan, or DPV, is submitted by each firm and approved by the Taiwan authorities. For CTVs sold from bonded factories, the DPV is the ex-factory price; for CTVs sold from unbonded factories, the DPV consists of production costs, SG&A costs, and profit, *i.e.*, the price to the first unrelated buyer. We disagree with respondents

that we should base the amount of tax added to USP on home market DPV. Because we are trying to make an "apples-to-apples" comparison, the amount of tax rebated or not collected by reason of exportation should be based on a U.S. tax base that is comparable to the home market tax base.

In order to ensure that foreign market value (FMV) and USP are comparable, it is necessary to determine at what point in the manufacturing/marketing chain the tax authority in Taiwan would have imposed the taxes on the exported merchandise, were it to impose the taxes in question at a point comparable to the point at which the home market tax is assessed. Accordingly, we have calculated the U.S. tax base for each type of sale, *i.e.*, whether from a bonded or unbonded warehouse, by applying the same formulae used to calculate the home market commodity tax base. In other words, we used the terms and conditions of home market sales to determine the imputed tax base for U.S. sales. Therefore, for bonded factories, we used the ex-factory price of the U.S. merchandise; for unbonded factories, we used the price to the first unrelated customer in the United States as the U.S. tax base. The tax rate in Taiwan was then applied to the U.S. tax base to determine the amount of tax that should be added to USP pursuant to 19 U.S.C. 1677a(d)(1)(C).

Comment 3: Zenith claims that the Department cannot make a circumstance-of-sale (COS) adjustment for differences in the amounts of commodity tax between the United States and the home market.

Action, AOC, Proton, Sampo, and Tatung disagree with the Department's decision to make a COS adjustment for commodity tax to FMV. They assert that, in its treatment of commodity tax, the Department should properly only add an amount representing imputed commodity tax to USP.

Department's Position: In our treatment of commodity tax, and COS adjustments for differences in actual and imputed commodity taxes, we are following the practice as established in prior administrative reviews. In order to avoid artificially inflating or deflating margins, we made COS adjustments equal to the difference between the per unit tax collected in Taiwan and the imputed per unit tax calculated for U.S. merchandise. See our position in Third Taiwan CTV Review, Comments 1 and 9; Fifth Korean CTV Review, Comment 1.

Comment 4: Zenith claims that the Department incorrectly failed to cap the amount of tax added to the USP at the level added to or included in the home market price.

Department's Position: We did not "cap" or otherwise reduce the amount of imputed tax that should be added to USP as this would have been inconsistent with our efforts to make an appropriate "apples-to-apples" comparison between FMV and USP. In any event, the COS adjustment equalized the tax in each market.

Comment 5: Zenith contends that, in those instances in which the Department used constructed value (CV) for FMV, it has failed to include in the calculation of CV all the general expenses usually reflected in sales of the merchandise which are made in the home market. Zenith argues that, because the price-based FMV relied upon delivered prices, CV should also include inland freight and the aggregate Taiwan home market commodity taxes.

Department's Position: We disagree with Zenith regarding the CV adjustments in question. Neither home market inland freight nor home market commodity taxes should be included in CV. Pursuant to the statute, the Department constructs an ex-factory value which consists of the sum of the cost of manufacturing, general expenses (*i.e.*, SG&A), profit, and the cost of packing the merchandise for shipment to the United States. In order to make appropriate "apples-to-apples" comparison of this FMV to USP, all commodity taxes and movement expenses are removed from USP. Contrary to Zenith's assertions, when CV is used to determine FMV, there is no basis in the statute or otherwise for including inland freight or home market commodity taxes.

Comment 6: Zenith contends that the Department should take into account each respondent's accounts payable that relate to home market sales, and apply the respondent's short-term interest rate to the average age and balance of those accounts to offset all claimed expenses. Zenith maintains that the true cost of the account payable is not the amount paid out, but rather the amount paid out minus the savings realized by paying that amount sometime after the obligation was incurred.

Citing to the Third Taiwan CTV Review and the Fifth Korean CTV Review, Action, AOC, Proton, Sampo, and Tatung note that the Department has previously rejected Zenith's arguments on this issue and urge the Department to maintain its long-held position.

Department's Position: We agree with respondents that there is no basis to take into account or to deduct any alleged imputed "savings" from home market selling expenses. As we pointed out in the Third Taiwan CTV Review, Comment 2, and more recently in the Fifth Korean CTV Review, Comment 3, any such savings would be taken into account by the seller in setting the terms of the discount or rebate. Therefore, it is not necessary to impute any additional offsetting savings. This is in contrast to credit costs or inventory carrying costs, in which the seller does not know how long it will take for a customer to pay, or how long the seller will store the merchandise before selling it.

Comment 7: Zenith argues that the Department should correct its ESP calculations by deducting the amount of antidumping-related legal expenses which respondents paid during the period of review. Zenith contends that these legal expenses are selling expenses and should be deducted in the same manner as are other selling expenses.

Action, AOC, Proton, Sampo and Tatung urge the Department to once again reject Zenith's argument and follow its well-established practice by continuing to regard legal fees incurred with respect to antidumping proceedings as unrelated to selling merchandise in the United States.

Department's Position: In this review, we have followed our practice as explained in past reviews, a practice sustained by the Court in Daewoo. See Third Taiwan CTV Review, Comment 3; Fifth Korean CTV Review, Comment 5. We do not consider legal fees paid in connection with litigation resulting from an earlier investigation or previous administrative reviews to constitute expenses related to sales made during this period of review. Such expenses are incurred to defend against an allegation of dumping. Accordingly, they are not expenses incurred in selling merchandise in the United States. Moreover, to deduct legal fees as selling expenses would effectively discriminate against those respondents who seek legal counsel in proceedings before the Department.

Comment 8: Zenith contends that the Department should adjust USP by the amount of any estimated antidumping duties paid and similar charges because the Tariff Act requires that USP be reduced by any charges or expenses that are incident to bringing merchandise from the country of exportation to its place of delivery in the United States. 19 U.S.C. 1677a(d)(2)(A).

Citing to the Third Taiwan CTV Review, Action, AOC, Proton, Sampo, and Tatung respond that Zenith's position is inconsistent with well-established Department policy, and urge

the Department to follow its practice of not adjusting USP for antidumping duty deposits.

Department's Position: We have followed the position in this review as explained in previous reviews. See Third Taiwan CTV Review, Comment 5; Fifth Korean CTV Review, Comment 6.' Like legal fees, we do not consider estimated antidumping duties to be expenses related to sales of merchandise under consideration for this period of review. Indeed, the entire purpose of the review is to determine what the actual antidumping assessment should be. Accordingly, it makes no sense to include in an antidumping duty calculation an estimate of the value that the Department ultimately is trying to determine. In this instance, to reduce USP by any estimated antidumping duties would artifically inflate the margins. Accordingly, we do not consider them to be "expenses" within the meaning of section 772(d)(2)(A) of the Tariff Act for purposes of determining USP.

Comment 9: Zenith claims the Department has erroneously treated selling commissions in the United States as though they consist entirely of indirect selling expenses. Zenith asserts that such commissions consist of both direct and indirect components. Accordingly, Zenith argues that an offset to FMV consisting of indirect expenses up to the full amount of U.S. commissions will be overstated by the amount of the direct expense component of the commission and effectively negate the removal from USP of that portion of the commission which represents direct selling expenses. Accordingly, U.S. commissions should be separated into their direct and indirect components and the offset to FMV should be capped at the level of the indirect expense component.

Zenith also argues that all indirect selling expenses incurred in the home market on all commissioned U.S. sales should be removed from USP. Zenith is concerned that unless this adjustment is made, such expenses may be commingled with home market indirect expenses included in offsets to FMV.

Action, AOC, Proton, Sampo, and Tatung argue that the Department has rejected Zenith's argument before and urge the Department to continue to offset the full amount of U.S. commissions with home market indirect selling expenses whenever commissions are paid in the United States but not in Taiwan.

Department's Position: Section 353.56(b)(1)(1990) of our regulations requires us to make an adjustment for situations in which a commission is paid in one market but not in the other market. That adjustment is limited to "the amount of the other selling expenses" allowed in the other market. We do not interpret this regulation to require us to limit the offset to only the indirect expenses of the recipient of the commissions. Indeed, it is not necessary to examine how the recipient of commissions spends the money because to the seller such monies represent direct expenses incurred as a result of the particular sale. The Department has followed this same methodology in previous reviews of television cases. See Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review, 53 FR 48706 (December 9, 1988), Comment 9; Third Taiwan CTV Review, Comment 4; Fifth Korean CTV Review, Comment 7.

Regarding Zenith's concern over the possible existence of home market indirect expenses that might be associated with commissioned U.S. sales, we find nothing in the record to suggest that such indirect expenses exist, and Zenith has not pointed to any evidence in the record to indicate the contrary.

Comment 10: Zenith argues that the Department has patently understated the best estimate of the ultimate liability on future entries by establishing antidumping cash deposit rates as a percentage of their lower entered values. For purposes of determining the amount to be deposited on entries not yet subject to review, Customs applies the weighted-average dumping margin to the declared value of the entered merchandise as best information available. Zenith argues that because the entered value is often less than the statutory USP, the dollar amount of the required deposit is less than it might otherwise be if the entered value of the merchandise were used to compute the dumping duty.

Action, AOC, Proton, Sampo, and Tatung note that Zenith's position is inconsistent with long-established Department practice, and urge the Department to continue its practice of calculating cash deposit rates on the basis of USP.

Department's Position: In this review, we have followed our practice as explained in previous reviews. See, e.g., Third Taiwan CTV Review, Comment 6; Fifth Korean CTV Review, Comment 8. Section 736 of the Tariff Act requires the Department to instruct Customs to "assess an antidumping duty equal to the amount by which the FMV of the merchandise exceeds the *United States price* of the merchandise * * *" (emphasis added). 19 U.S.C. 1673e(a)(1). thus by statute, we are required to calculate an assessment rate based upon the reviewed entries' statutory USP, not upon the entered value of the merchandise.

The actual assessment rate also serves as the best estimate for cash deposit purposes for all subsequent entries not yet subject to review. We use this rate because at the time the merchandise is entered, its USP has yet to be determined. Insofar as cash deposits must be made at the time of entry, we instruct Customs to determine the amount of the required deposits by basing it upon a percentage of the only value available—the entered value. However, if it is determined after a subsequent review that the amount of the estimated duties deposited on these entries is less than the actual amount to be assessed, we will collect the difference together with interest.

Comment 11: Zenith objects to the Department's acceptance of comments filed by Action, AOC, Proton, Sampo, Shirasuna, and Tatung because these comments were improperly served on Zenith.

Department's Position: The Department agrees that respondents Action, AOC, Proton, Sampo, Shirasuna, and Tatung served their comments on all parties, including Zenith, improperly. Their comments, however, were filed with the Department in the proper regulatory time frame. In order to compensate any party inconvenienced by the improper service, such as Zenith, we offered that party extra time to file comments.

Comment 12: Action, AOC, Proton, Sampo, and Tatung contend that the Department incorrectly made COS adjustments to USP in ESP transactions. Citing to *Timken Co.* v. *United States* 673 F. Supp. 495, 509–12 (CIT 1987) (*Timken*), they argue that the Department's methodology is not consistent with 19 U.S.C. 1677b(a)(4) of the antidumping statute, which authorizes COS adjustments only to FMV.

Zenith states that *Timken* was wrongly decided. Zenith argues that, because *Timken* is not a final decision, it may be overturned on appeal. Zenith therefore urges the Department to reject respondents' argument and maintain its well-established approach to the mechanics of ESP adjustments.

Department's Position: We disagree with respondents. Our methodology is in accord with section 772(e)(2) of the Tariff Act, which states that ESP shall be adjusted by being reduced by the amount of "expenses generally incurred by or for the account of the exporter in

the United States in selling identical or substantially identical merchandise." Accordingly, we made appropriate adjustments to ESP for warranty, guarantees, and servicing, credit, direct advertising and promotion, royalty, and commissions.

Further, as noted by Zenith, the remand undertaken pursuant to *Timken* is not yet final, and may yet be overturned on appeal. Therefore, we will continue to apply our standard methodology in accordance with the statutory requirement.

Company-Specific Comments

Comment 13: Shirasuna claims that, in its margin calculations, the Department incorrectly used the exchange rate in force on the date of the third-country sale, as opposed to the exchange rate in force on the date of the United States sale, as required by the Commerce Regulations.

Department's Position: We agree with Shirasuna. We have made the appropriate changes to Shirasuna's margin calculations.

Comment 14: Shirasuna claims that, in its margin calculations, the Department applied an incorrect harbor tax rate of $0.61 to one sale of model 5A2, instead of the $0.62 amount used in calculations for other sales of model 5A2.

Department's Position: We disagree. In our margin calculations, we used the correct amount for harbor tax for all sales of model 5A2. The amounts of $0.61 and $0.62 both came from Shirasuna's submitted sales listing, which we verified.

Comment 15: Shirasuna claims that in calculating the CV for 9-inch televisions, the Department, by using as a basis for CV the cost of manufacturing (COM) of models sold in third-country markets, as opposed to the COM of models sold in the United States, acted contrary to the statute and prior Department practice.

Department's Position: In calculating FMV for comparison to Shirasuna's U.S. sales of 9-inch televisions, we used CV since the only sales of such or similar merchandise, which occurred in third-country markets, were at prices below the cost of production. Our use of CV of models sold in third-country markets is consistent with prior practice in several administrative reviews. In all completed reviews of CTVs from Taiwan, whenever we have found sales below the cost of production in the home market or a third-country market, we have used the cost of manufacture of models sold in those markets as a basis for CV.

Comment 16: Action asserts that the Department failed to take account of the fact that Action's revised home market sales listing, as submitted after verification, included the Taiwan value added tax (VAT). Action claims that the Department must address this error by adding the amount of the VAT to USP.

Zenith asserts that, to the extent that home market prices for respondents other than Action may not include VATs, the Department should ensure that its final calculations for all respondents include a VAT amount in FMV.

Department's Position: We agree that we did not take account of the fact that Action's revised home market sales listing included the VAT. For these final results, we have added an imputed VAT amount to USP, and made a COS adjustment for the difference in taxes. Furthermore, we have revised our preliminary calculations for other respondents with respect to the VAT. For the other companies, except for AOC, we have added the actual amount of the VAT to FMV, since those companies had originally reported their home market prices net of the VAT. We then added an imputed VAT amount to USP, and made a COS adjustment for the difference in taxes. Because AOC's home market sales are VAT tax-exempted, no adjustment was made to our analysis of AOC.

Comment 17: Action claims that the Department, in its calculations of Action's ESP sales margins, should have subtracted the ESP offset from FMV, instead of adding the amount, as the Department did.

Department's Position: We agree with Action, and have changed the program accordingly.

Comment 18: Action claims that the Department overstated Action's indirect selling expenses on indirect purchase price transactions in calculating the offset for commissions in the home market. Action asserts that the Department, in calculating the amount of U.S. indirect selling expenses, should have multiplied the export selling expense factor by Action's FOB price to its U.S. subsidiary, not by the U.S. subsidiary's final sale price.

Department's Position: We agree with Action. Action calculated the export expense factor by dividing allocated indirect expenses of the trading department by total export sales. The export sales figure in the denominator of the calculation is the total of FOB sales. We therefore agree with Action that, in order to determine the amount of the U.S. indirect selling expense offset to home market commissions, we should multiply the export selling expense factor by Action's FOB price. We have adjusted our calculations accordingly.

Comment 19: Proton claims that the Department made three errors with respect to Proton's difmer adjustment. First, Proton claims that the Department failed to use the revised difmer figures that the Department verified in Taiwan. Proton asserts that the Department in fact used the original, unrevised figures. Second, Proton claims that the Department used the wrong sign in its calculations involving Proton's difmer adjustment, thereby adding when it should have subtracted, and vice versa. Third, Proton states that several of Proton's difmer adjustment figures failed to appear in the Department's actual calculations, as is evident from an examination of the transaction margin data set.

Department's Position: We agree with Proton that we failed to use revised figures for the difmer adjustment. We have therefore changed the computer program to reflect the accurate difmer adjustments.

We agree with Proton that, in making the difmer adjustment, we used the wrong sign, thereby adding an amount when we should have been subtracting the same amount, and vice versa. In our final results, we have corrected this error.

We disagree with Proton regarding its third claim that several of Proton's difmer adjustments failed to appear in our calculations. Among our computer printouts was one data set, called "HM sales with no match," that included all those home market sales which were not used for comparison purposes. Because these sales were not being matched to any U.S. sales, we did not enter any difmer figures for these sales. In the printout of this data set, the difmer adjustment therefore appears as a zero.

Comment 20: Sampo claims that the Department erred in giving Sampo the best information available rate. Sampo claims that, since it filed a letter on April 24, 1989 stating that it had no shipments, it should therefore receive its earlier rate of 0.78%. Sanyo also claims that the Department incorrectly assigned it the best information available rate. Sanyo claims that it submitted a letter to the Department dated April 26, 1989, stating that it had no shipments for the period under review, and that it therefore should receive its earlier rate of 4.66%.

Department's Position: We agree with Sampo and Sanyo. In our final results, we have therefore changed these companies' rates to 0.78% and 4.66%, respectively. These rates are those received by Sampo and Sanyo respectively in the most recent review

period for which they had reviewed shipments.

Comment 21: Zenith claims that in its analysis of sales by Tatung, the Department failed to conduct inland freight and royaty expenses from Tatung's FMV. Furthermore, Zenith claims that the Department deducted Tatung's home market indirect selling expense twice.

Department's Position: We agree with Zenith that we failed to deduct royalty expenses from Tatung's FMV, and that we deducted home market selling expenses twice. We have corrected our calculations accordingly. We disagree with Zenith, however, that we failed to deduct Tatung's Taiwan inland freight from FMV. We corected deducted Taiwan inland freight in our preliminary results.

Comment 22: Tatung states that the Department incorrectly published Tatung's preliminary margin as 0.32%. Because the transaction margin set indicates that the margin of dumping was 0.0032%, the published rate should have been 0.00%.

Department's Position: We agree with Tatung that we erred in publishing a preliminary rate of 0.32%, when in fact our preliminary margin was 0.0032%. Although Tatung's margin is now in fact 0.04%, the published margin for the preliminary results should have been 0.003%, not 0.00% as Tatung assets.

Comment 23: RCA contends that the Department erred in reclassifying all of RCA's engineering and resident engineering (ERE) expenses from SG&A expenses to factory overhead. They claim that some of the engineering expenses should be excluded completely from RCA's CV, and other expenses should be included as part of SG&A. RCA agrues that that portion of the engineering expenses related to the development of a certain chassis which was not produced during the period of review are research and development expenses, and should be included in SG&A and not factory overhead. In support of its argument, RCA cites Portable Electric Typewriters from Japan, 53 FR 40926, October 19, 1988, Comment 46, in which the Department included research and development associated with future products in SG&A. RCA also contends that that portion of the expenses related to a certain television chassis produced in Taiwan and shipped to North America for use in the manufacture of 20-inch television receivers should be excluded completely from its CV. If further contends that component engineering expenses for evaluating whether component parts produced by outside vendors in Taiwan conformed to specifications for sets produced at other plants located throughout the world should also be excluded from RCA's CV, since these costs do not relate to color televisions produced by RCA in Taiwan. RCA cites, as support for these exclusions, Sweaters Wholly or in Chief Weight of Man-made Fibers from Korea, 55 FR 32659, 32671, August 10, 1990, Comment 29, in which the Department excluded those research and development costs incurred in the development of products not subject to the review.

Zenith argues that RCA has tried to convert its case brief into a vehicle for an untimely submission of factual information in an effort to correct the original misclassification of its expenses. Zenith claims that the Department should not consider this new information, and should retain the classification of expenses reflected in the preliminary results.

Department's Position: We agree, in part, with respondent. In its questionnaire response, RCA reported all of its ERE expenses as part of SG&A. The brief description of ERE provided in the company's response indicated that the expense would be classified more properly as CTV factory overhead. At the Department's request, RCA provided a more detailed description of its ERE expense. This information showed that a portion of the expense, while related to general CTV production, was not incurred specifically for those models sold during the period of review. For our final results of review, we therefore reclassified from factory overhead to SG&A that portion of the ERE expense that, while not incurred for those particular CTVs sold during the review period, nonetheless benefitted indirectly the subject models.

We do not, however, agree with RCA's contention that a portion of the company's ERE expense should be excluded from CV altogether. In its questionnaire response, RCA itself included in its CV the ERE expense that it now claims should be excluded on the basis that it does not relate to subject CTV models. Presumably, RCA would not have included these engineering expenses in its original calculation of CV unless there were at least some indirect benefit accruing from the expenditure to CTV production in general. Therefore, for the final results of review, we continue to include in our CV calculation, either as factory overhead or SG&A, all of RCA's reported ERE expense.

With regard to Zenith's comment, we reserve the right to request information from respondents at any point in the review. At our request, RCA submitted data clarifying certain of its expense classifications, such as it ERE expense. RCA, however, also submitted new, unsolicted CV calculations based on revised methodologies. Because these calculations were untimely submitted and, furthermore, not requested, we did not consider them.

Comment 24: RCA contends that the Department erred in reclassifying all of its plants engineering from SG&A to factory overhead because a portion of these expenses relate to general corporate administrative services and not to services provided to the production facility.

RCA argues that that part of plant engineering that relates to non-production activities should be included in SG&A expenses. In support, RCA cites the following cases: Porcelain-on-Steel Cooking Ware from Taiwan, 51 FR 36425, October 10, 1986, Comment 8; Oil Country Tabular Goods from Taiwan, 51 FR 19371, May 29, 1986, Comment 3; and Certain Electric Motors from Japan, 49 FR 32727, August 15, 1984.

Department's Position: We agree with respondent. RCA's Plant Engineering Department is responsible for plant electricity, housekeeping services, and building maintenance at the company's Taiwan factory. In deriving the CV calculations originally submitted in the company's questionnaire response, RCA included all plant engineering expenses in SG&A. At the Department's request, RCA later submitted information clarifying the nature of the reported plant engineering expenses. The company also furnished allocation factors to apportion the expense between factory overhead and SG&A based on the square footage of RCA's Taiwan plant devoted to production versus non-production activities. We used these factors to reallocate plant engineering expense for the CTV models sold during the review period.

Comment 25: RCA maintains that the Department erred in reclassifying all its shipping, receiving, floor material control (FMC) and stores expenses from SG&A to factory overhead. It claims that these expenses are associated with receipt and warehousing of raw materials, and warehousing and shipping of finished products. RCA argues that these expenses shoud be allocated between SG&A and factory overhead. It claims that the percentage of the expense related to employees responsible for warehousing and shipping the finished products should be classified as SG&A and the remaining expense classified as factory overhead. In support of its argument, RCA cites the following cases: Certain Heavy Walled

Rectangular Carbon Steel Pipes and Tubes from Canada, 50 FR 48238, November 22, 1985; and Tool Steel from the Republic of Germany, 49 FR 29995, July 25, 1984, Comment 9, in which the Department included the cost of a finished goods warehouse network in SG&A expense.

Department's Position: We agree with respondent. RCA's initial CV calculations included all shipping, receiving, FMC, and stores expense in SG&A. At the Department's request, RCA later submitted to detailed description of the expense, as well as factors for apportioning the reported amounts between factory overhead and SG&A. The portion of shipping, receiving, FMC and stores expense allocated to SG&A was derived as a percentage of the total expense by dividing the number of employees responsible for warehousing and shipping finished goods by the total number of shipping department employees. We used the reallocated expense in the calculation of CV for the CTV models sold during the review period.

Comment 26: RCA argues that the Department incorrectly reclassified industrial relations expenses from SG&A to factory overhead. Since industrial relations is a corporate management support function, it is properly classificable as SG&A. In support of its argument, RCA cites the following cases: Certain Small Business Telephone Systems and Subassemblies from Korea, 54 FR 53141, December 27, 1989; Porcelain-on-Steel Cooking Ware from Taiwan, 51 FR 36425, October 10, 1986, Comment 41; Oil Country Tabular Goods from Taiwan, May 29, 1986, Comment 8; and Certain Electric Motors from Japan, 49 FR 32627, August 15, 1984.

Department's Position: After publication of the preliminary results of review, and at the Department's request, RCA submitted information detailing the nature of the company's industrial relations expense. After reviewing this information, we agree with RCA that the industrial relations expense incurred by the company during this review period should be included in SG&A expense rather than in the company's factory overhead costs. We have revised our CV calculations to reflect this change for our final results of review.

Comment 27: RCA claims that the Department erroneously reclassified property taxes and insurance from SG&A to factory overhead. According to RCA, this expense category includes property insurance, business interruption insurance, property taxes on land and buildings, and company car license fees. RCA contends that these expenses constitute SG&A, as consistently defined by the Department. In support of its claim, RCA cites the following cases: *Photo Albums and Filler Pages from Hong Kong,* 50 FR 43751, October 29, 1985; *Oil Country Tubular Goods from Canda,* 51 FR 15029, April 22, 1986; and *Circular Welded Carbon Steel Pipe and Tube from Thailand* 51 FR 3384, January 27, 1986, Comment 6. RCA further argues that, if the Department rejects its claim that property taxes and insurance should be classified as SG&A, then the Department should allocate at least a portion of the reported expense to SG&A. RCA recommends using the same production and non-production area allocation methodology used to allocate plant engineering expenses (see Comment μ24).

Department's Postion: We disagree with respondent's contention that property taxes and insurance premiums should be categorized exclusively as period expenses in SG&A. Property taxes paid on RCA's manufacturing facility are clearly associated with the production process and should therefore be included in factory overhead costs. Similarly, premiums paid to insure the manufacturing facility against property damage or other insurable risk would also be considered part of the company's factory overhead. To the extent that any other taxes or insurance premiums bear such an obviously identifiable relationship to the manufacturing process, these too would be included in RCA's CTV factory overhead costs.

We agree with RCA's second contention that property taxes and insurance premiums incurred by the company should be allocated between factory overhead and SG&A. Based on clarifications submitted to the Department by RCA, these expenses relate to both the production and non-production activities of the company's Taiwan facility. Consequently, the amounts incurred should not be classified exclusively as either factory overhead or SG&A expense. To calculate CV for the CTV models sold during the review period, we therefore reallocated property taxes and insurance based on the square footage of the facility devoted to production and non-production activities.

Comment 28: RCA maintains that the Department erred in reclassifying all depreciation expenses, regardless of the precise nature of the expense, from SG&A to factory overhead. They indicate that only depreciation of production machinery and production related facilities should be classified as factory overhead. Depreciation expenses for non-production related facilities should be included as SG&A.

Department's Position: We agree. In deriving the CV calculations submitted in its questionnaire response, RCA categorized depreciation expense as part of SG&A, without regard to the nature of the amounts incurred. The Department's practice, however, is to consider the expenses incurred from production-related plant and equipment as an actual cost of manufacturing the merchandise. Therefore, in preparing CV calculations for our preliminary results of review, since RCA had not provided a satisfactory description of its reported depreciation expense, we reclassified all depreciation from SG&A to factory overhead cost. We later requested that RCA submit information apportioning the company's reported depreciation between production and non-production related assets. RCA now contends that depreciation of production-related fixed assets should be recognized as factory overhead, while depreciation of all non-production fixed assets should be recognized as part of SG&A expense. We agree with this position and have used the apportioning factors reported by RCA to allocate the company's depreciation between factory overhead and SG&A.

Comment 29: RCA contends that the Department incorrectly reclassified management fees from SG&A to factory overhead. These expenses relate to administrative, financial and other management advice and services. RCA cites the following cases as support: *Potassium Chloride from Israel,* 50 FR 4560, January 31, 1985, Comment 5; *Certain Small Business Telephone Systems and Subassemblies from Taiwan,* 54 FR 42543, October 17, 1989; and Oil Country Tubular Goods from Taiwan, 51 FR 19371, May 29, 1986, Comment 8.

Department's Position: After publication of the preliminary results of review, and at the Department's request, RCA submitted information detailing the nature of the company's management fee expense. After reviewing this information, we agree with RCA that the management fees paid by the company during this review period should be included in SG&A expense rather than the company's factory overhead costs, because the amounts were incurred for administration, financial and other management advice and service. We have revised our CV calculations to reflect this change for our final results of review.

Comment 30: RCA claims that inventory revaluation expenses originally classified in the company's

questionnaire response as material costs should be reclassified as SG&A. This expense is associated with the normal write-down of inventory value resulting from changes in standard costs during the year, as well as year-end conversion of inventory value from one year's standard cost to the next year's standard cost. RCA cites in support for its claim, the following cases: Antifriction Bearings from Japan, 54 FR 18991, May 3, 1989, Comment 10; and Certain Small Business Telephone System and Subassemblies from Taiwan, 54 FR 42543, October 17, 1989, Comment 16.

Department's Position: According to RCA, at the end of each fiscal year, the company revises standard costs for all of the products it produces. The change in standard costs is applied not only prospectively to products manufactured in the following year, but also retroactively to any inventory balances remaining at year-end. The resultant revaluation of inventory costs from one standard to the next is recognized in the current year's income statement as either income or expenses depending on whether the new standard costs were higher or lower than the old standards.

In its questionnaire response, RCA reported standard CTV costs adjusted for cost variances that arose during the review period. The company included in its reported CTV manufacturing costs an allocated portion of the year-end revaluation of inventory balances from old standard costs to revised standard costs. Based on RCA's description of its inventory revaluation adjustment, we determined that including the expense in CV would overstate the company's actual CTV production costs. For our final results of review, we therefore excluded the amount from CV.

Comment 31: RCA claims that the Department erred in disallowing a deduction from CV for gains resulting from foreign currency translations. According to RCA, the translation gains resulted from foreign currency-denominated purchases of materials for CTV production. RCA further claims that since the income from the translation gains was related to CTV materials purchases, the Department should make an adjustment to offset the company's materials costs.

Department's Position: We disagree with respondent. In reviewing information submitted by RCA, we found evidence that the reported gains did not result from the company's CTV materials purchases, but rather from the periodic translation of the company's financial statements from the functional currency, the Taiwan dollar, to the reporting currency, the U.S. dollar. We later confirmed these findings with RCA officials.

In past antidumping cases, where gains and losses resulting from foreign currency translations and transactions cannot be identified specifically as a cost of of producing the merchandise, the Department has excluded these amounts from CV. Small Business Telephone Systems from Korea, 54 53141, December 27, 1989. We therefore continue to exclude RCA's translation gains from our final CV calculations.

Comment 32: RCA contends that, since the company had no home market sales during the period of review, the Department should use as a surrogate for home market selling expenses amounts incurred by Thomson Consumer Electronics, RCA's U.S. subsidiary, for U.S. CTV sales. According to RCA, to correctly calculate CV, the Department must include these surrogate selling expenses in CTV general expenses. RCA adds that the Department should then allow an adjustment to FMV for these same surrogate selling expenses.

Department's Position: We disagree with RCA's position. Where CV is used as basis for FMV, section 773(e)(1)(B) of the Tariff Act requires that general expenses be those amounts usually incurred for sales in the country of exportation. The Tariff Act further mandates that general expenses must be at least ten percent of the producer's manufacturing costs as defined under section 773(e)(1)(A). There is no provision within the statute instructing use to us U.S. selling expenses as a surrogate when the producer does not incur selling expenses in its home market.

In deriving the CV for the company's CTV products, because RCA's own home market general expenses fell below the statutory minimum, we included in our computation general expenses equal to ten percent of the company's CTV manufacturing costs.

Comment 33: Petitioners claim that the Department erred in using AOC's submitted home market sales as a basis for FMV. Petitioners claim that these sales are fictitious since AOC is in fact related to its exclusive home market distributor. As evidence for this allegation, petitioners cite to reimbursements for both overhead and research and development received by AOC from its home market distributor in the 1987–88 administrative review. Petitioners go on to claim that these payments should be treated as off-invoice payments, and that it is not unlikely that AOC received similar off-invoice payments in the 1988–89 review period. Further, petitioners argue that since these companies are related, the sales in question have no basis in commercial reality. Petitioners therefore request the Department to use either the sales of the exclusive home market distributor for FMV, or use the best information available.

AOC states that it is unrelated to its exclusive home market distributor. AOC explains that on February 18, 1987, it entered into a contract under which its exclusive home market distributor agreed to reimburse AOC for certain research and development and overhead expenses incurred in the design and production of CTVs for the exclusive home market distributor. AOC asserts that these expenses were entirely limited to the prior review period and that no such payments were received in the 1988–89 review period.

Department's Position: We disagree with petitioner's allegation that AOC is related to its exclusive home market distributor. In our recently completed verification of data submitted by AOC in the 1988–89 review period, we verified that these companies were not related parties. Further, we found no indication that home market sales transactions were not made at arm's length. Based on our verification, we disagree with petitioner that the sales between AOC and its home market distributor were fictitious. We verified that the only reimbursement received by AOC from its home market distributor during the period were for commodity tax and import duty, as reported. Any reimbursements for overhead and research and development received by AOC during the 1987–88 review period will be dealt with in the context of that review. Accordingly, we continue to use AOC's sales to that customer as a basis for FMV.

Comment 34: Zenith and petitioners urge the Department to reject the submitted difmer adjustment figures, and use best information available instead. Petitioners claim that the Department used specious difmer adjustment figures submitted by AOC. Petitioners assert that the data is suspect because it is internally inconsistent, and fails to agree with AOC's submitted cost of manufacturing information. Both petitioners and Zenith note that AOC's difmer data was not supported at verification. They suggest that the Department use the highest margin found in this review for best information available, or, alternatively, reject only the difmer claims that involve more costly home market models. Petitioners concur with this latter suggestion.

AOC argues that the Department should use AOC's submitted difmer figures because there is no reason to question their validity. AOC states that the alleged inconsistencies cited by petitioners were due to the fact that cost of manufacturing figures and difmer figures were calculated using costs from different periods.

Department's Position: At verification, we attempted to verify AOC's claimed materials difmer. We discovered that each reported home market model material cost reflected costs in only one month of the review period. AOC was unable to offer a verifiable explanation as to which of the home market model material costs were selected for reporting. Therefore, for the final results, we used the best information available in order to calculate the material element in the difmer adjustment. Since we only encountered difficulty with the home market models' material costs, we decreased the cost of materials for home market models by a percentage equal to the greatest variation verified between material costs for any given home market model.

An exception to this was made for sales involving the one model match for which difmer could be adequately verified. For these sales, no adjustment to the reported difmer was made for the final results.

A second exception was made for U.S. purchase price models shipped during the review period, but produced and sold during the April 1, 1987–March 31, 1988 review period. These were compared with home market models produced and sold during that earlier period. For these sales, AOC provided, for the record of this review, difmers as reported in the 1987–88 review. Since these difmers were previously verified, we continued to use them for purposes of these final results.

Comment 35: Petitioners state that, during verification, the Department discovered that AOC understated the material cost of CTV models sold in Taiwan. Petitioners drew certain conclusions from that assertion. For further information, see our proprietary memo to the file dated May 28, 1991.

AOC states that the Department, in its verification report, did not reach the conclusion that AOC understated the material costs of the CTV models sold in Taiwan.

Department's Position: We disagree with petitioners' contention that the verification showed that AOC understated its home market model material costs. The verification only showed that AOC was unable to support its reported difmer figures. The variations between reported costs and bills of material viewed at verification were attributable to AOC's inconsistent method of selecting months for purposes of reporting home market model material costs in its difmer calculations. These variations were small.

For a further analysis of petitioners' comments, please see our proprietary memo to the file dated May 28, 1991.

Comment 36: Petitioners claim that the Department's offset to U.S. commissions on purchase price transactions, and to U.S. indirect selling expenses on ESP transactions, was incorrect. Petitioners state that AOC's claim for indirect selling expenses must be incorrect if the Department accepts AOC's assertion that its exclusive home market distributor bears all marketing expenses, direct and indirect, in the home market. Petitioners therefore argue that the Department should adjust its methodology accordingly.

More specifically, petitioners argue that the Department should reduce AOC's claimed home market indirect selling expenses by the amount of expenses allocated from cost center 581. They point out that the verification report listed cost center 581 as applying to television marketing and cost center 582 as applying to television marketing—home market, and conclude that cost center 581 must include expenses only for export sales.

AOC asserts that, while it did state that its exclusive home market distributor is responsible for all "marketing functions," that is not to say that AOC incurs no selling expenses whatsoever for its home market sales. AOC in fact incurs direct, *e.g.* credit, and indirect selling expenses on home market sales. AOC states that the modest nature of its indirect selling expenses claim reflects this situation. The company also notes that since, as the verification report indicates, account 582 records only the home market inspection fee, then such indirect expenses on home market sales must be booked in cost center 581. AOC urges the Department to reject petitioners' allegations.

Department's Position: We disagree with petitioners. There is no evidence on the record to indicate that cost center 581 does not include costs for home market television sales. Therefore, we have accepted AOC's allocation of combined indirect selling expenses from cost centers 581 and 582 to both home market and export sales on the basis of relative sales value.

Comment 37: Petitioners claim that AOC failed to provide an accurate average amount of time that ESP transactions remained in the warehouse of AOC-USA, Inc. (AOC-USA), since AOC divided inventory in warehouse by total CTV sales, including U.S.-produced CTVs, rather than just ESP sales. Since the Department accepted AOC's data, the Department grossly understated AOC's inventory carrying costs in calculating margins on AOC's ESP transactions. To correct for this alleged error, petitioners suggest an alternate methodology for derivation of inventory carrying costs whereby the Department should calculate the inventory period of ESP sales by dividing the total volume of AOC's ESP sales by the total average inventory of AOC-USA. This number should then be multiplied by the average short-term interest rate for the period of review to yield the amount for inventory carrying costs.

AOC states that, despite the fact that petitioners have raised this issue before, the Department has accepted AOC's methodology in the three previous reviews for which there are final results. AOC claims that, since AOC-USA's records do not permit calculation of inventory values on a product-specific basis, the only reasonable approach is to divide total inventory of all products by total sales of all products to yield an average inventory period for products sold by AOC-USA. AOC states that the total average inventory figure includes the inventory carrying costs of not only CTVs from Taiwan, but also U.S.-produced CTVs and monitors. AOC claims that dividing this total inventory amount only by ESP sales, as petitioner suggests, would grossly exaggerate AOC's inventory period.

Department's Position: We disagree with petitioners. AOC's method of calculating inventory carrying costs for merchandise warehoused in the United States is reasonable. AOC has allocated inventory costs incurred by AOC-USA to sales of all merchandise inventoried by AOC-USA, but not to purchase price sales of televisions. Petitioners' suggested method would overstate costs by allocating costs for all merchandise inventoried by AOC-USA only to ESP sales of televisions. We have accepted the methodology used by AOC to calculate inventory carrying costs here, as in previous reviews.

Comment 38: Zenith argues that the Department's calculation of ESP should reflect the operating experience of AOC's U.S. subsidiary. Petitioners make a similar argument. For further details, please refer to Zenith's and petitioners' proprietary submissions dated May 10, 1991. For AOC's rebuttal, refer to AOC's proprietary submission of May 15, 1991.

Department's Position: We disagree with Zenith's suggested method of reflecting AOC-USA's operating

experience. We are satisfied that our preliminary results calculation of ESP fully accounted for AOC-USA's operating experience. For further details, please refer to the Department's proprietary memo to the file dated May 20, 1991.

Comment 39: Zenith contends that the Department should adjust both AOC's home market prices and USP for commodity tax and import duties for the reasons stated in Zenith's proprietary submission dated May 10, 1991. Zenith also contends that if the Department decides not to adjust both AOC's home market price and USP, then the Department should not make an adjustment to AOC's USP for commodity tax and import duties for the reasons stated in Zenith's proprietary submission dated May 10, 1991.

Department's Position: We agree. Commodity tax and import duties were not included in AOC's reported home market price. For these final results, we added them to FMV. We also calculated imputed U.S. commodity taxes and import duties, which we then added to USP. We made adjustments for tax differences in accordance with the methodology presented in the response to comment 2 above.

Final Results of the Review

As a result of comments received, we have revised our preliminary results for Action, AOC, Proton, RCA, Sampo, Sanyo, Shirasuna, and Tatung, and we determined the margins to be:

Manufacturer/ Exporter	Period	Margin (percent)
Action Electronics Co., Ltd	04/01/88-03/31/89	1.40
AOC International, Inc	04/01/88-03/31/89	1.22
Funai Electric Co., Ltd	04/01/88-03/31/89	[1] 4.44
Hitachi Television (Taiwan) Ltd	04/01/88-03/31/89	[2] 10.82
Kuang Yuan Co., Ltd	04/01/88-03/31/89	[1] 0.00
Nettek Corp., Ltd	04/01/88-03/31/89	[2] 10.82
Paramount Electronics	04/01/88-03/31/89	[2] 10.82
Philips Electronics Industries (Taiwan), Ltd	04/01/88-03/31/89	[2] 10.82
Proton Electronic Industrial Co., Ltd	04/01/88-03/31/89	0.55
RCA Taiwan, Ltd	04/01/88-03/31/89	5.74
Sampo Corp	04/01/88-03/31/89	[1] 0.78
Sanyo Electric (Taiwan) Co., Ltd	04/01/88-03/31/89	[1] 4.66
Shinlee Corp	04/01/88-03/31/89	[1] 10.14
Shin-Shirasuna Electric Corp	04/01/88-03/31/89	10.82
Tatung Co	04/01/88-03/31/89	0.04
Teco Electric and Machinery Co., Ltd	04/01/88-03/31/89	[1] 5.46

[1] No shipments during the period; rate is from the last review in which there were shipments.

[2] No response; we therefore used the best information available, which was either the highest rate among respondent firms in this review, or the subject firm's most recent margin, whichever was higher.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins for each firm shall be required. Since the margins for Tatung and Kuang Yuan are *de minimis* and zero, respectively, the Department shall not require a cash deposit of estimated antidumping duties on entries from those firms.

For any entries of this merchandise from a new exporter, whose first shipment occurred on or after April 1, 1989, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 10.82 percent shall be required. These cash deposit requirements and waiver are effective for all shipments of CTVs from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1990).

Dated: June 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16428 Filed 7-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-811]

Preliminary Determination of Sales at Less Than Fair Value: Tungsten Ore Concentrates From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: July 10, 1991.

FOR FURTHER INFORMATION CONTACT: Tracey Oakes, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 at (202) 377-3174.

Preliminary Determination

We preliminarily determine that imports of tungsten ore concentrates from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the notice of initiation on Febraury 20, 1991 (56 FR 6835), the following events have occurred. On March 11, 1991, the International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of tungsten ore concentrates.

On April 3, 1991, the Department of Commerce's (the Department's) questionnaire was presented to the two exporters of the subject merchandise identified by the Embassy of the PRC, China National Metals Import and Export Corporation (MINMETALS) and China National Nonferrous Metals Import and Export Corporation (CNIEC). A response to section A of the Department's Questionnaire was received on April 17, 1991. On May 23, 1991, respondents submitted a partial response to sections C and D of the questionnaire.

On June 14, 1991, the Department presented respondents with a supplemental questionnaire. On June 21, 1991, a partial response to the Department's supplemental questionnaire was received.

Standing

Prior to initiation, the Department received letters in opposition to the petition arguing that the "like product" should be defined to include intermediate tungsten products and that the Department should dismiss the petition because it was not supported by a majority of the domestic industry. In the Department's initiation, we determined that tungsten ore concentrates and tungsten intermediate products are separate like products. On March 11, 1991, the ITC preliminarily

determined that intermediate tungsten products are not like the imported tungsten ore concentrates. Since the ITC's preliminary ruling, parties opposing the petition have not submitted further comments regarding standing in this case. We continue to believe that tungsten intermediate products are not like tungsten concentrates and, therefore, that the petition was brought on behalf of the domestic industry.

Scope of Investigation

The merchandise covered by this investigation is tungsten ore concentrates. This includes any concentrated or upgraded form of raw tungsten, ore, whether high- or low-grade. High grade tungsten ore concentrates are defined as a concentrated form of tungsten ore containing 65 percent or more by weight of tungsten trioxide. Low-grade tungsten ore concentrates are defined as a concentrated form of tungsten ore containing less than 65 percent by weight of tungsten trioxide. Low-grade tungsten ore concentrates include tungsten slime, which has a concentration of less than 35 percent by weight of tungsten trioxide. Tungsten ore concentrates are used in the production of intermediate tungsten products such as APT, tungstic oxide, and tungstic acid. These intermediate products have end uses in the metalworking, mining, construction, transportation, and oil- and gas-drilling industries. Tungsten ore concentrates are currently classifiable under item 2611.00.00.00 of the *Harmonized Tariff Schedule* (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is July 1, 1990 through January 31, 1991.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for sales of the subject merchandise in this investigation. In deciding whether to use best information available, section 776(c) provides that the Department may take into account whether the respondent provided the information requested in a timely manner and in the form required.

Respondents completely failed to report information requested in the factors of production section of the antidumping questionnaire such as the types, quantity, and characteristics of (1) material inputs, (2) labor inputs, and (3) overhead inputs. Therefore, we used best information available in this case because MINMETALS and CNIEC provided materially deficient responses which would not permit any meaningful analysis. We have determined that the best information available is information submitted by the petitioner.

Fair Value Comparisons

To determine whether sales of tungsten ore concentrates from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Petitioner's estimate of USP is based on U.S. Bureau of Census data on imports of high and low grade tungsten ore from the PRC. Petitioner's calculation of USP is adjusted for foreign inland freight.

Foreign Market Value

Petitioner alleges that the PRC is a nonmarket economy country within the meaning of section 773(c) of the Act. Accordingly, petitioner based FMV on constructed value (CV). Constructed value is based on factors or production valued in the market economy countries of India and Peru. Petitioner also added the statutory minimums of ten percent for selling, general and administrative expenses (SG&A) and eight percent for profit, in accordance with section 773(e)(1)(B) of the Act.

Verification

Because MINMETALS and CNIEC provided materially deficient responses, we do not intend to conduct a verification.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of tungsten ore concentrates from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to 151.00 percent on all entries of tungsten ore concentrates from the PRC.

The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than August 28, 1991, and rebuttal briefs no later than September 4, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing for tungsten ore concentrates will be held on September 6, 1991, at 10 a.m., at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearings 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and, (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: July 1, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16429 Filed 7-9-91; 8:45 am]

BILLING CODE 3510-05-M

Commercial Information Product User Fees

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The U.S. and Foreign Commercial Service (US&FCS), U.S. Department of Commerce, is establishing new user-fee rates for its expanded Comparison Shopping Service (CSS).

EFFECTIVE DATE: July 10, 1991.

SUPPLEMENTARY INFORMATION: The Comparison Shopping Service provides a custom market survey for a U.S. firm's specific product in a selected country market. A CSS survey covers a single product in a single country market and answers basic questions relating to the marketability of the product, key competitors, comparative prices, customary distribution and promotion practices, trade barriers and other factors. The expanded Comparison Shopping Service is to take effect as of the date of publication in the **Federal Register**, and the following new user-fee schedule will take effect on this date.

FOR FURTHER INFORMATION CONTACT: Catherine Mahoney, Acting Manager for Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Telephone: 202–377–8220.

User Fee Schedule for the Expanded Comparison Shopping Service

Algeria	$500
Argentina	1,250
Australia	1,250
Austria	1,500
Belgium	1,250
Brazil	750
Canada	1,500
Chile	1,250
China	1,500
Colombia	500
Costa Rica	750
Czechoslovakia *	1,250
Denmark	1,250
Dominican Republic	500
Ecuador	750
Egypt	1,250
Finland	1,500
France	1,500
Germany	3,000
Greece	1,250
Guatemala	750
Honduras	500
Hong Kong	2,000
Hungary *	1,250
India	1,000
Indonesia	500
Ireland	1,500
Israel	1,000
Italy	2,000
Ivory Coast	500
Jamaica	500
Japan	3,500
Kenya	1,000
Korea	1,500
Kuwait *	500
Malaysia	750
Mexico	2,500
Morocco	500
Netherlands	1,000
New Zealand	1,250
Nigeria	750
Norway	1,250
Pakistan	1,250
Panama	500
Peru	500
Philippines	500
Poland *	1,000
Portugal	750
Romania *	750
Saudi Arabia	500
Singapore	1,250
South Africa	500
Spain	1,000
Sweden	1,250
Switzerland	1,750
Thailand	1,750
Taiwan	1,750
Trinidad & Tobago	1,000
Turkey	750
United Arab Emirates	500
United Kingdom	1,500
U.S.S.R. * (depending on Republic)	500–4,000
Venezuela	1,500
Yugoslavia *	1,250

* Special conditions apply in some countries. Please check with CSS Product Manager 202–377–8972.

NOTE: These prices will remain in effect until 28 February 1992.

NOTE: Other countries may be added to this list at a later date.

Although the Department of Commerce is not legally required to issue this notice under 15 U.S.C. 1525, this notice is being issued as a matter of general policy.

Authority: 15 U.S.C. 175 and 15 U.S.C. 1525.

Dated: May 13, 1991.

Susan C. Schwab,

Assistant Secretary and Director General of the U.S. and Foreign Commercial Service.

[FR Doc. 91–16402 Filed 7–9–91; 8:45 am]

BILLING CODE 3510–FP–M

[C–122–505]

Oil Country Tubular Goods (OCTG) from Canada: Final Negative Countervailing Duty Determination on Remand and Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 10, 1991.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5414.

BACKGROUND INFORMATION: On April 22, 1986, the Department of Commerce ("the Department") published notice of the Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada (51 FR 15037), and on June 16, 1986, issued a countervailing duty order (51 FR 21783).

Subsequently, a Canadian respondent in the investigation, Ipsco, filed a lawsuit in the Court of International Trade ("CIT") challenging the Department's determination. On April 18, 1989, the CIT issued its final decision in the litigation. *Ipsco, Inc. and Ipsco Steel, Inc.* v. *United States,* 710 F.Supp. 1581 (CIT 1989). Ipsco appealed the CIT's decision to the Court of Appeals for the Federal Circuit ("CAFC"), which on April 3, 1990, remanded to the Department for recalculation of the net subsidy rate. *Ipsco, Inc. and Ipsco Steel, Inc.* v. *United States,* 899 F.2d 1192 (CAFC 1990). On remand, the Department calculated a net subsidy rate of 0.066 percent *ad valorem.* The CIT affirmed these remand results on January 9, 1991, and no parties appealed that affirmation to the CAFC within the prescribed appeal period, resulting in the Department's remand determination being final and unappealable.

According to 19 CFR 355.7 (1990), the Department "will disregard any aggregate net subsidy that the (Department) determines is less than 0.5% *ad valdorem.*" Because the Department's final calculated net subsidy rate in this matter falls below the *de minimis* level, the Department determines that no benefits that constitute countervailable subsidies are being provided to manufacturers,

producers, or exporters in Canada of OCTG, and therefore is revoking the countervailing duty order on OCTG. The Department will instruct the U.S. Customs Service to proceed with liquidation of all unliquidated merchandise without regard to countervailing duties, to refund all cash deposits, and to release all securities posted to cover estimated countervailing duties.

July 3, 1991.

Marjorie A. Chorlins,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 91-16430 Filed 7-9-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Wreckfish Limited Entry Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public hearing and provide a comment period to solicit public input on changes to Amendment 5 to the Snapper-Grouper Fishery Management Plan (wreckfish limited entry) before submission to the Secretary of Commerce for final approval.

DATES: Written comments on proposed changes to Amendment 5 must be received by July 24, 1991. The public hearing will begin at 7 p.m., on Tuesday, July 23, 1991, in Charleston, South Carolina.

ADDRESSES: Comments should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407-4699.

The hearing will be held at the South Carolina Wildife & Marine Resources Center on Fort Johnson Road, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, 803-571-4699.

SUPPLEMENTARY INFORMATION: The following are additional measures and clarifications/modifications of existing measures for Amendment 5 that were presented to the public for comment in Jacksonville Beach, Florida, on June 27, 1991, and are to be presented at this public hearing:

(1) Drop the 10,000-pound trip limit upon implementation of the wreckfish individual transferable quota (ITQ) system, which is scheduled to be in place for the beginning of the 1991 fishing season (August 16, 1992).

Discussion: The 10,000-pound trip limit addressed the potential problem of short-term oversupply under open access and a restrictive quota. When the wreckfish fishery is managed under ITQs, a market mechanism to distribute catch over the fishing year and allow fishermen to fish when fishing is economically optimal will exist. The trip limit, which is a non-market based measure to restrict the pace of fishing under open access management, was implemented as an interim measure until a market-based mechanism could be put in place under limited entry. ITQs will provide for potentially greater total net economic benefits from the wreckfish resource than are possible with the use of trip limits and will obviate the trip limit as a management tool.

(2) Offloading of wreckfish can occur only between 8 a.m., and 5 p.m., local tme.

Discussion: This measure was included in Amendment 4 to aid enforcement of the trip limit. The Council believes that restricting offloading to the specified hours will increase compliance with individual quotas and make enforcement considerably more effective. Exceeding individual quotas and non-reporting are recognized problems in ITQ programs abroad, and measures to make monitoring of offloading more effective will help to prevent these problems. For this reason, the Council believes that offloading restrictions should be continued under ITQ management.

(3) When offloading wreckfish in any location other than the premises of a Federally-permitted wreckfish dealer, 24 hours prior notice must be given to the nearest NMFS Enforcement office.

Discussion: In Amendment 4, 24 hours prior notice is required for all wreckfish offloadings in order to facilitate enforcement of the trip limit. With the requirement for Federal dealer permits and restricted offloading hours, however, the Council believes that 24-hour prior notice is necessary only when offloading at a facility that is not that of a Federally-permitted dealer. Exceeding individual quotas and non-reporting are recognized problems in ITQ programs abroad, and measures to make monitoring of offloading more effective will help to prevent these problems. For this reason, the Council believes that 24-hour notice is important when offloading to non-permitted dealers so that monitoring of those offloadings can be accomplished.

(4) To obtain a Federal wreckfish permit, applicants must possess a state wholesalers license in the state where they operate and are required to have a physical facility at a fixed location in the state in which they hold the state wholesalers license. Dealers can use unpermitted agents to offload and transport fish but must comply with the 24-hour notice requirement. In addition, a fee to cover the administrative costs of issuing dealer permits will be charged. (Modification/clarification of Action 16 of Amendment 5.)

Discussion: Requiring applicants for Federal wreckfish dealer permits to have a fixed location where they operate will help to prevent non-reporting (failure to possess or cancel wreckfish ITQ coupons) and facilitate enforcement of offloadings.

(5) Publishing percentage shares as public information.

Discussion: The Council intends to publish the names of individuals receiving percentage shares and the shares they will receive pror to final issuance. The Council believes that making this information public will help alert the Council to any possible cases of fraud and will facilitate the free-market trading of shares. At a public hearing in Jacksonville Beach, wreckfish fishermen and dealers were queried as to any potential negative effects on their business if shares were made public.

All of those queried indicated that making shares public would have no detrimental effect. Making shares public was recommended by fishermen at the Amendment 5 public hearings as an additional measure to effectively prevent fraud. Members of the Council's Wreckfish Advisory Panel also recommended making percentage shares public information.

Dated: July 3, 1991.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-16319 Filed 7-9-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Argentina

July 3, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of letters dated May 14 and 31, 1991, the Governments of the United States and Argentina agreed to establish a Bilateral Textile Agreement on wool textile products in Category 448, produced or manufactured in Argentina and exported during three consecutive one-year periods, beginning on April 1, 1989 and extending through March 31, 1992.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 448 for the period which began on April 1, 1991 and extends through March 31, 1992.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 3, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement, effected by exchange of letters dated May 14 and 31, 1991, between the Governments of the United States and Argentina; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 11, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Argentina and exported during the twelve-month period beginning on April 1, 1991 and extending through March 31, 1992 in excess of 57,125 dozen [1].

Imports charged to the limit for Category 448 for the period April 1, 1990 through March 31, 1991 shall be charged against the level of restraint for Category 448 to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Argentina.

Import charges will be provided as data become available.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–16341 Filed 7–9–91; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 31, 1991.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 91–32]

OMB Clearance Request for Superseding Part Numbers and Superseding Parts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Superseding Part Numbers and Superseding Parts.

DATES: Comments should be submitted on or before September 9, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, Office of Information and Regulatory Affairs, OMB, room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy, GSA, (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation (FAR), section 10.010, requires that, when considering the purchase of surplus material, contracting officers must determine that the material is acceptable, with additional consideration given to (1) safety, (2) cost of inspection testing and useful life, and (3) availability and cost of new materials and components. In order to accomplish this, it is necessary to require information on offerors of former Government surplus material concerning its origin and condition. The clause requires this information only from companies who offer surplus material.

The information provided by surplus offerors enables the Government to trace the origin of former Government surplus material and validate its condition and reasons for disposal.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 3600; *responses per respondent,* 1; *total annual responses,* 3600; *preparation hours per response,* 1; and *total response burden hours,* 3600.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 401–4755. Please cite OMB Clearance Request for Superseding Part Numbers and Superseding Parts in all correspondence.

Dated: June 28, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–16363 Filed 7–9–91; 8:45 am]

BILLING CODE 6820–34–M

[FAR Case 91-321]

OMB Clearance Request for Brand Name or Equal

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for OMB Clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Brand Name or Equal.

DATES: Comments should be submitted on or before September 9, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, Office of Information and Regulatory Affairs, OMB, room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy, GSA (202) 501-3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation (FAR), section 10.010, requires that, when considering the purchase of surplus material, contracting officers must determine that the material is acceptable, with additional consideration given to (1) safety, (2) cost of inspection testing and useful life, and (3) availability and cost of new materials and components. In order to accomplish this, it is necessary to require information on offerors of former Government surplus material concerning its origin and condition. The clause requires this information only from companies who offer surplus material.

The information provided by surplus offerors enables the Government to trace the origin of former Government surplus material and validate its condition and reasons for disposal.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 65,000; *responses per respondent,* 1; *total annual responses,* 65,000; *preparation hours per response,* 1; *and total response burden hours,* 65,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Clearance Request for Brand Name or Equal in all correspondence.

Dated: June 28, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91-16364 Filed 7-9-91; 8:45 am]

BILLING CODE 6820-34-M

[FAR Case 91-32]

OMB Clearance Request for Surplus Material—Certification and Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for OMB Clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Surplus Material—Certification and Information.

DATES: Comments should be submitted on or before September 9, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, Office of Information and Regulatory Affairs, OMB, room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy, GSA (202) 501-3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation (FAR), section 10.010, requires that, when considering the purchase of surplus material, contracting officers must determine that the material is acceptable, with additional consideration given to (1) safety, (2) cost of inspection testing and useful life, and (3) availability and cost of new materials and components. In order to accomplish this, it is necessary to require information on offerors of former Government surplus material concerning its origin and condition. The clause requires this information only from companies who offer surplus material.

The information provided by surplus offerors enables the Government to trace the origin of former Government surplus material and validate its condition and reasons for disposal.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 105; *responses per respondent,* 80; *total annual responses,* 12,000; *preparation hours per response,* 25; and *total response burden hours,* 3000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Clearance Request for Surplus Material—Certification and Information in all correspondence.

Dated: June 28, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91-16365 Filed 7-9-91; 8:45 am]

BILLING CODE 6820-34-M

Office of the Secretary

Privacy Act of 1974; Amendment

AGENCY: Office of the Secretary, DOD.

ACTION: Notice; Amendment.

SUMMARY: The Department of Defense proposes to amend the introductory indexes to the Compilation of Privacy Act System of Records Notices for the Department of the Army, Office of the Secretary of Defense, Department of the Air Force, Defense Communications Agency, Department of the Navy, and the Defense Logistics Agency. The introductory index serves as a guide to assist the public in identifying and locating systems of records notices subject to the Privacy Act maintained by the various Department of Defense components which may contain records about themselves.

EFFECTIVE DATE: July 10, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, Defense Privacy Office, 400 Army Navy Drive, suite 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: The indexes appear at the beginning of each of the mentioned Components systems of records notices and end before the **Requesting Records** heading. This reader's aid is intended to assist individuals in locating record systems that may contain information about themselves in order that they may

submit a request for access or amendment to records pertaining to them.

No changes to the "Blanket Routine Uses" are being made.

The indexes were last published in the **Federal Register** as part of the Department of Defense Compilation of Systems of Records Notices on May 29, 1985.

The amendment is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The indexes of the various DoD Components being revised are set forth below as amended.

Dated: July 3, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

United States Army

Privacy Act Systems of Records

How Systems of Records are Arranged

Department of the Army records are identified by the number of the directive which prescribes that those records be created, maintained and used. For example, a system of records about assignment of military personnel may be found in the "assignments, details and transfers" area, the 614 series; medical treatment records are in the "medical services" area, the 40 series. Some subjects, such as investigations, are treated as sub-elements of a series, e.g., "criminal investigations", "security", and "military intelligence". "Criminal investigations" are found in the 195 series; "security investigations" are found in the 380 series and "intelligence investigations" are found in the 381 series.

However, "civilian personnel investigations" are not covered by Army systems of records notices; they are covered by Office of Personnel Management systems of records notices—in this case, under "OPM/GOVT-4". The following list is a general guide to subjects which are retrieved by personal identifier and are in the Army systems of records notices. Office of Personnel Management systems of record notices which identify records in the temporary custody of the Army have been added to this guide; they bear "OPM/GOVT, OPM/CENTRAL, AND EEOC/GOVT" identification numbers.

How To Use the Index Guide

To locate a particular system of records, follow the general guide below. The series in which the subject is located corresponds to the system notice identification number. For example: Pay records for military and civilian personnel are in the 37 series; comparable system notices are A0037-104-3bSAFM and A0037-105SAFM, respectively. The first letter, "A", represents the Army, the number (37-104-3) is the prescribing directive, and the suffix letters are internal management devices. Systems of records notices are published in numerical sequence by identification number. They are further identified by name, location and category of individuals covered by the notice.

Subject Series

System Identification Series

Appeals, Grievances, Complaints (civilian)
A0690-700 and OPM/GOVT-1
Awards and Decorations
A0672-5-1 and A-0672-20
Civilian Personnel Record
A0690-200
Congressional Inquiries
A0001-20
Court-martials
A0027-10
Criminal Investigations
A0195-2
Dependents' Education
A0352-3
Housing
A0210-10 * * *, A0210-50 * * *, A0210-51
Inspector General Inspections/Investigations
A0020-1
Intelligence/Counterintelligence
A0381-20 * * *, A0381-45
Labor-Management Relations
A0690-700
Laundry and Dry Cleaning
A0210-130
Military Police Investigation and Complaint Files
A0190-30 * * *, A0190-45
Legal Assistance
A0027-3
Personal Property Accounts
A0700-84
Medical Records
A0040 * * *, OPM/GOVT-3
Military History
A0870-5
Military Personnel Records
A0600 * * *, A0640
Non-appropriated Funds
A0215-3
Passports
A0055-46 * * *, A0600-290
Pay (civilian and military)
A0037-105 * * *, A0037-101-1 * * *, A0037-104-10
Pharmacy Services
A0040-2
Photographic Records
A0108-2
Postal Service
A0065
Privacy Act Requests
A0340-21
Procurement
A0715-5 * * *, A0715-8
Real Estate
A0027-1 * * *, A0405-80
Review Boards (military)
A0015-185 * * *, A0015-180
Security Access/Clearance
A0604-5
Schools
A0351-1 * * *, A0351-3 * * *, A0351-5 * * *, A0351-9, A0351-12 * * *, A0351-17 * * *, A0351-22 * * *, A0351-24
Training
A0350-37 * * *, A0690-400 * * *, OPM/GOVT-3
Travel
A0037-106
Transportation
A0055-71 * * *, A0055-46 * * *, A0055-355
Veterinary Service
A0040-905

Office of the Secretary of Defense

Privacy Act Systems of Records

How Systems of Records are Arranged

The office of the Secretary of Defense (OSD) provides immediate staff assistance and advice to the Secretary of Defense, independently organized and identified offices function in full coordination and cooperation. Therefore, the Office of the Secretary of Defense systems of records are not maintained or arranged by subject but established in functional areas of a particular responsible staff office. The Office of the Secretary of Defense includes the offices of the Under Secretaries of Defense, the Assistant Secretaries of Defense, and Assistants to the Secretary of Defense, the General Counsel, DoD, and such other staff offices as the Secretary of Defense establishes to assist him in carrying out his duties and responsibilities.

How to Use the Index Guide

To assist in locating and reviewing the particular record system of interest, the various staff offices and the prefix letter symbols represented as part of the record system identification for that office are set for below.

OSD Office

System Identification

Special Assistant to the Secretary and Deputy Secretary of Defense
DATSD
Office of the Assistant Secretary of Defense (Force management and Personnel)
DFM&P
General Counsel, Department of Defense
DGC
Office of the Assistant Secretary of Defense (Health Affairs)
DHA
Office of Civilian Health and Medical Program of the Uniformed Services, DoD
DOCHA
Department of Defense Dependents Schools
DODDS
Office of the Assistant Secretary of Defense (Public Affairs)

DPA
Office of the Assistant Secretary of Defense (Program Analysis and Evaluation)
DPA&E
Defense Systems Management College
DSMC
Office of the Under Secretary of Defense for Acquisition
DUSA
Office of the Under Secretary of Defense for Policy
DUSDP
Washington Headquarters Services
DWHS

United States Air Force

Privacy Act Systems of Records

How Systems of Records are Arranged

In the Air Force, records are grouped by subject series. Each series has records about a specific activity or function to which a subject title and number is given. Systems of records are grouped in the same way. For example, a system of records on personnel security clearances may be found in "Security—205," and one about psychiatry in "Medical Service—160". These numbers are part of the system identification which precede the notices. They look like this: F205 AF SP A or F160 ARPC A. The letter 'F' means Air Force. The first three digits (205 and 160) show that the records pertain to Security and the Medical Service respectively. The letters that follow indicate to whom the system applies and or the Office of Primary Responsibility (OPR). For example, F205 AF SP A—AF indicates that this is an Air Force-wide system, with SP denoting Security Police as the OPR. The last alpha designation is for internal management control. In the records system F160 ARPC A—ARPC indicates that this is an Air Reserve Personnel Center (ARPC) system and applies to Reserve personnel only.

Using the Index Guide

The systems of records maintained by the Air Force are contained within the subject series that are listed below.

This list identifies each series in the order in which it appears in this issuance. Use the list to identify subject areas of interest. Having done so, use the series number (for example 205 for Security) to locate the systems of records grouping in which you are interested.

System Identification Series

Subject Series

Administrative Communications
010
Administrative Practices
011
Air Force Records Management Program
012
Personnel
030
Military Personnel
035
Civilian Personnel
040
Reserve Forces
045
Training
050
Flying Training
051
Schools
053
Flying
060
Equipment Maintenance
066
Supply
067
Contracting and Acquisition
070
Transportation and Traffic Management
075
Military Airlift
076
Research and Development
080
Housing
090
Judge Advocate General
110
Military Justice
111
Inspector General
120
Inspection
123
Special Investigations
124
Security Police
125
Safety
127
Medical Service
160
Aerospace Medicine
161
Dental Services
162
Medical Administration
168
Auditing
175
Non-Appropriated Funds
176
Accounting and Finance
177
Cost and Management Analysis
178
Public Affairs
190
Intelligence
200
Security
205
Historical Data and Properties
210
Education Services Program
213
Morale, Welfare, and Recreation
215
Chaplain
265
Awards, Ceremonies, and Honors
900

Defense Communications Agency

Privacy Act Systems of Records

How To Use the Index Guide

To assist the reader in locating and reviewing the particular record system of interest, the various agency offices and the prefix letter symbols represented as part of the record system identification for that office are set forth below.

System Identification Series

Subject Series

General Counsel
KCIV
Defense Communications Engineering Center
KDCE
Defense Commercial Communications Office
KDEC
Defense Communications Agency Europe
KEUR
Equal Employment Opportunity DCA
KMIN
National Communications System
KNCS
Defense Communications Agency Pacific
KPAC
White House Communications Agency
KWHC
Confidential Statement of Employment and Financial Interest
K105.01
Investigation of Complaint of Discrimination
K107.1
Travel Orders Records System
K232.01
Injury Record File
K232.02
Security
K240.
Mishap Report
K317.01
Claims Files
K660.01
Civilian Personnel
K700.
Freedom of Information Act Files
K890.01
Awards Case History File (Military)
K890.03
Military Personnel Management/Assignment Files
K890.04
Overseas Rotation Program Files
K890.05
Card File for Forwarding Mail of Departed Personnel
K890.06
Education, Training, and Career Development Data System
K890.07

United States Navy

Privacy Act Systems of Records

How Systems are Arranged

Department of the Navy systems of records are numbered to coincide with the subject matters identified in the

Standard Subject Identification Code (SSIC).

Each series of records has been assigned a major subject title, followed by a combined alpha-numeric identification number. For example, the systems of records containing financial information would be found under the major subject title, Financial Management. The range of identification of records will be from 7000 to 7999. The systems of records concerning military pay is 7220. If there are multiple systems of records maintained under this series, the identification number will be identified as N07220-1, N07220-2, N07220-3, etc. The last digit, i.e., -1, -2, -3, indicates the first, second, and third systems of records within the category of military pay.

When assigning numbers to systems of records, we identify the appropriate SSIC for the system and formulate the system number by adding "N" for Navy to the beginning of the number, followed by the SSIC number. "0" is placed after the "N" for SSIC codes 1000 through 9999, since each system must begin with "N" followed by five digits.

How To Use the Index Guide

The systems of records maintained by the Department of the Navy are contained within the major subject title and numerical series of the SSIC. The list identifies each series in numerical order. Use the list to identify major areas of interest.

System Identification Series

Subject Series

Military Personnel
1000-1999
Telecommunications
2000-2999
Operations and Readiness
3000-3999
Logistics
4000-4999
General Administration
5000-5999
Medicine and Surgery
6000-6999
Financial Management
7000-7999
Ordnance Material Readiness
8000-8999
Ships Design and Material
9000-9999
General Material
10000-10999
Facilities and Activities
11000-11999
Civilian Personnel
12000-12999
Aeronautical and Astronautical Material
13000-13999

For Further Assistance

The Chief of Naval Operations is designated the Privacy Act Coordinator for the Department of the Navy. Any questions or assistance you may require should be addressed to the Chief of Naval Operations (OP-09B30), Room 5E521, Pentagon, Washington, DC 20350-2000. POINT OF CONTACT is Mrs. Gwendolyn Aitken, Commercial (703) 614-2004/2817, Autovon 224-2004/2817.

Defense Logistics Agency

Privacy Act Record Systems

How Systems of Records Are Arranged

This numbering system is also used to categorize and identify Privacy Act systems of records. A typical system identifier looks like this: S322.01 DLA-K. The letter "S" denotes the Defense Logistics Agency; the first digit "3" represents the primary functional category (Personnel); the digits "22" represent a secondary function with the broad "Personnel" category; the decimal fraction ".01" is a sequential number used to differentiate one 322-series system from another; the suffix letters "DLA-K" designate the DLA organization with general responsibility for the functional area.

How To Use the Index Guide

The systems of records maintained by DLA are contained within the functional series listed below. Refer to the list to identify areas of interest. Use the functional category number to locate the system of records in which you are interested. The notices are arranged in numeric order.

Defense Logistics Agency records are arranged by major functional categories with each category having a 3-digit identification number. The functional categories are as follows:

System Identification Series

Subject Series

Administration
100
Planning and Management
200
Personnel
300
Finance
400
Transportation
600
Contracting
800

[FR Doc. 91-16310 Filed 7-9-91; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary of Defense

Defense Finance and Accounting Service Performance Review Board Membership

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Beverley McDaris, Defense Finance and Accounting Service, Human Resources Directorate, 1931 Jefferson Davis Highway, Crystal Mall 3/room 434, Washington, DC 20376-5001.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

John Springett, Principal Deputy Director, Defense Finance and Accounting Service—Headquarters.

Clarence Hoop, Director for Systems Operations, Information Management, Defense Finance and Accounting Service—Headquarters.

Daniel Turner, Deputy Director for Operations, Defense Finance and Accounting Service—Headquarters.

John Cooley, Director for Accounting and Reporting, Operations, Defense Finance and Accounting Service—Headquarters.

Thomas McCarty, Deputy Director for Plans, Defense Finance and Accounting Service—Headquarters.

Gary Amlin, Deputy Director for Policy, Defense Finance and Accounting Service—Headquarters.

Arnold Weiss, Assistant Deputy Director for Policy, Defense Finance and Accounting Service—Headquarters.

John Barber, Director for Accounting Policy, Policy, Defense Finance and Accounting Service—Headquarters.

Charles Coffee, Director for Financial Management, Policy, Defense Finance and Accounting Service—Headquarters.

Lorraine Lechner, Deputy Director for Resource Management, Defense Finance and Accounting Service—Headquarters.

Doug Farbrother, Assistant Deputy Director for Resource Management, Defense Finance and Accounting Service—Headquarters.

Jay Williams, Director—Cleveland Center, Defense Finance and Accounting Service.

Bernard Gardetto, Deputy Director—Columbus Center, Defense Finance and Accounting Service.

Clyde Jeffcoat, Director—Denver Center, Defense Finance and Accounting Service.

Jerome Coleman, Deputy Director—Denver Center, Defense Finance and Accounting Service.

James McQuality, Director for Security Assistance and Accounting Center, Denver Center, Defense Finance and Accounting Service.

Michael Wilson, Director—Indianapolis Center, Defense Finance and Accounting Service.

John Nabil, Director—Kansas City Center, Defense Finance and Accounting Service.

Geoffrey Cratch, Director—Washington Center, Defense Finance and Accounting Service.

Ardel Johnson, Director for Pensacola Computer Design Activity, Washington Center, Defense Finance and Accounting Service.

Dated: July 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-16312 Filed 7-9-91; 8:45 am]

BILLING CODE 3810-01-M

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: Upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Director, Personnel and Security Division, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 703-274-7325.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. William Sharkey, Assistant Director, Policy and Plans, Defense Contract Audit Agency, Chairperson.

Mr. John van Santen, Assistant Director, Resources Defense Contract Audit Agency, member.

Mr. Roy Heidemann, Assistant Director, Operations Defense Contract Audit Agency, member.

Regional Performance Review Board

Mr. Gary Neil, Director, Field Detachment, Defense Contract Audit Agency, Chairperson.

Mr. Harvey Della Bernarda, Regional Director, Eastern, Defense Contract Audit Agency, member.

Mr. Francis Summers, Deputy Regional Director, Northeastern Defense Contract Audit Agency, member.

Dated: July 3, 1991.

Linda M. Bynum,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-16311 Filed 7-9-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Acceptance of Group Application

In the matter of "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., who served overseas as a result of TWA's contract with the Air Transport Command during the period February 26, 1942 through August 14, 1945".

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA's Contract With the Air Transport Command During the Period February 26, 1942, Through August 14, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (AFPC), Washington, DC 20330-1000. Copies of documents or other materials submitted cannot be returned. For further information, contact LtCol Dunlap, (703) 692-4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-16360 Filed 7-9-91; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 9, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1989 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management,

publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above

Dated: July 3, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for Grants under the Strengthening Institutions Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden—Responses: 454; *Burden Hours:* 8,853.

Recordkeeping Burden—Recordkeepers: 0; *Burden Hours:* 0.

Abstract: This form will be used by State Educational Agencies to apply for funds under the Strengthening Institutions Program. The Department uses the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New.

Title: Chapter 1 Schoolwide Project Survey.

Frequency: One time only.

Affected Public: State or local governments.

Reporting Burden—Responses: 1,746; *Burden Hours:* 2,283.

Recordkeeping Burden—Recordkeepers: 0; *Burden Hours:* 0.

Abstract: This survey will provide the Department with information about design and characteristics of Chapter 1 schoolwide projects, including the schools and districts in which they operate. The Department will use this information to evaluate the effectiveness of the projects.

[FR Doc. 91-16307 Filed 7-9-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-36-NG]

Jonan Gas Marketing, Inc.; Application for Blanket Authorization To Import and Export Natural Gas Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas including liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 24, 1991, of an application filed by Jonan Gas Marketing, Inc. (Jonan), for blanket authorization to import and to export up to a total of 15 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year period, beginning on the date of first import or export. Jonan intends to utilize existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, August 9, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Jonan is a corporation organized under the laws of the State of Nevada with its principal place of business in Calgary, Alberta, Canada. It is a natural gas marketing and trading company which operates primarily in the western United States. Jonan intends to import and export natural gas and LNG from and to Canada, Mexico, and other countries as commercial circumstances warrant. Jonan would import and export gas for its own account as well as for the accounts of others. Jonan states that the price of gas in each transaction will be determined by competitive factors in arms length negotiations. It is anticipated that the price will be adjusted on a monthly or quarterly basis as required by market conditions.

The decision on the import portion of this blanket application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate. Parties that may oppose this application should comment in their responses on these issues. The applicant asserts the import would be competitive and there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing the arrangement bear the burden of overcoming these assertions.

Jonan requested that DOE grant expedited treatment but did not identify emergency or other considerations which would warrant a reduction in DOE's normal 30-day comment period. Therefore, no decision on Jonan's application will be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or

notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Jonan's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC July 5, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-16420 Filed 7-9-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-37-NG]

Shell Gas Trading Co.; Application To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 24, 1991, of an application filed by Shell Gas Trading Company (SGTC) requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. SGTC intends to use existing U.S. pipeline facilities which interconnect with Mexican pipeline facilities at various points on the U.S./Mexican border. SGTC states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 9, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: SGTC, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of Shell Energy Resources Inc., a holding company, which in turn is wholly owned by Shell Oil Company, a Delaware corporation. SGTC's affiliated companies include Shell Offshore Inc., and Shell Western E & P Inc., both of whom are producers and sellers of natural gas from onshore and offshore United States.

SGTC is currently authorized to export up to 60 Bcf of U.S. natural gas to Canada under ERA Opinion and Order No. 229 (Order 229). SGTC has yet to use this authorization. If DOE grants SGTC's application to export gas to Mexico, the order will combine the requested 100 Bcf with the volumes authorized by Order 229 for a total of up to 160 Bcf and will vacate that prior authorization.

SGTC states that it will sell the requested natural gas volumes on a short-term or spot basis and the contractual arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the

proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of SGTC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 3, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-16421 Filed 7-9-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-34-NG]

TransCanada Pipelines Limited; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 10, 1991, of an application filed by TransCanada Pipelines Limited (TransCanada), subsequently amended by letter on May 23, 1991, to import up to 98.35 Mcf per day of natural gas from Canada beginning on June 1, 1991 through October 31, 2005. The imported gas would be furnished to Great Lakes Gas Transmission Limited Partnership (Great Lakes) to be used primarily as compressor fuel required to transport gas that Great Lakes imports from Canada and exports back to Canada on behalf of TransCanada. The gas TransCanada seeks authority to import will not be sold in the United States, but rather will be consumed by Great Lakes in providing transportation services for TransCanada.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., eastern time, July 25, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: TransCanada is a Canadian natural gas transmission company extending from Alberta to Quebec that purchases, transports, and sells natural gas to customers in Canada and the United States. The requested authorization would replace authority currently held by Great Lakes to import up to approximately 16,000 MMcf of gas per year. Great Lakes purchases this gas from TransCanada for compressor fuel and other company uses in rendering its transportation services.

The decision on TransCanada's application for import authority will be made consistent with the DOE's international gas trade policy with its general emphasis or flexible, freely negotiated arrangements. The competitiveness of the imported gas is not a consideration in this proceeding because no gas would be sold in the U.S. The applicant asserts that the proposed import authority will assure the long-term continuation of the transportation arrangements. Parties opposing the proposed import arrangement bear the burden of overcoming these assertions.

TransCanada requests that FE establish a shortened notice and comment period of no more than 10 days, and thereafter expeditiously grant the import authorization requested. Because TransCanada proposes to import natural gas to be used primarily as compressor fuel by Great Lakes in providing transportation services for TransCanada in connection with import/export arrangements already found to be consistent with the public interest, the comment period is reduced to 15 days. With regard to TransCanada's request for an expeditious granting of the import request, a decision on TransCanada's request will not be made until all responses to this notice have been received and evaluated.

In addition, all parties should be aware that if the application is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported in order to facilitate monitoring of the operation of the DOE's natural gas import program. In addition, Great

Lakes current authorization would be vacated.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TransCanada's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 3, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-16422 Filed 7-9-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-1028-001 and CP91-1029-001]

Transcontinental Gas Pipe Line Corp.; Amendment

July 3, 1991.

Take notice that on June 28, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed a petition to amend its applications in Docket Nos. CP91-1028-000 and CP91-1029-000 requesting the Commission to approve abandonment of Rate Schedule X-221 (Docket No. CP91-1028-000) and Rate Schedule X-217 (Docket No. CP91-1029-000) without the condition of a reduced level of successor service under Transco's Rate Schedule FT, and to request an effective date of the proposed abandonments of October 10, 1989, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before July 15, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 91-16325 Filed 7-9-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued the Week of May 6 Through 10, 1991

During the week of May 6 through May 10, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

John H. Carter, 5/8/91, LFA-0079

On June 1, 1990, John H. Carter filed a Motion for Reconsideration of a Decision and Order issued by the Department of Energy's (DOE) Office of Hearings and Appeals (OHA) deciding a Freedom of Information Act (FOIA) Appeal filed by David KeKok. Carter contended that OHA's determination that David DeKok was a representative of the news media was incorrect. OHA denied Carter's Motion. In considering this motion, the following issues were discussed: (i) The interaction of the Freedom of Information Act of 1986 with the Department of Energy's FOIA regulations and (ii) the interpretation of the term "representative of the news media."

The Oak Ridger, 5/6/91, LFA-0111

John Avergy Emison filed on behalf of The Oak Ridger a Freedom of Information Act (FOIA) Appeal from a determination issued to the newspaper by the Authorizing Official of the Oak Ridge Operations Office of the DOE. The determination, which was issued in response to a request for information which Mr. Emison had submitted under the FOIA, withheld a report and portions of documents pursuant to Exemptions 4 and 5. In considering the Appeal of material withheld pursuant to

Exemption 5, the DOE found that, with the exception of certain segregable, factual information and a redacted copy of the table of contents to a Source Evaluation Board Report, the Authorizing Official's determination to withhold records was correct and consistent with the principles of Exemption 5. Accordingly, the DOE granted in part The Oak Ridger's Appeal.

Refund Applications

Atlantic Richfield Co., Bud's Arco, 5/10/91, RR304-2

The DOE issued a Decision and Order concerning a Motion for Modification filed by Bud's Arco (Bud) in the Atlantic Richfield Company special refund proceeding. In Bud's Motion for Modification, Bud convincingly demonstrated additional purchases of petroleum products and was therefore granted an additional refund of $2,262.

Gulf Oil Corp./Reit Fuel Oil Co., Point Bay Fuel, Inc., F.C. Haab Co., Inc., 5/8/91, RR300-16, RR300-17, RR300-18

The Department of Energy (DOE) issued a Decision and Order which granted supplemental refunds to Reit Fuel Oil Co., Point Bay Fuel, Inc. and the F.C. Haab Co., Inc. in the Gulf Oil Corporation special refund proceeding. The DOE found that it was reasonable to grant additional refunds to these applicants, as they submitted supplemental gallonage information which they did not possess at the time of their original filings. The total of the refunds granted in this decision was $12,263.

Nebraska Energy Office, 5/9/91, RF272-49892

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the Nebraska Energy Office based on purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is an agency of the government of the State of Nebraska that applied for a refund based solely on its purchases of refined petroleum products for end-use. Part of the applicant's claim was based on its purchases of armor oil, which the DOE determined was a covered petroleum product and eligible for refund in this proceeding. Philip P. Kalodner, counsel for utilities, transporters and manufacturers, filed conditional objections to this application. Mr. Kalodner argued that governmental entities are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut Nebraska's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to the applicant's eligibility unconvincing and granted Nebraska a refund of $204,142.

State of North Carolina, 5/6/91, RA272-39

The DOE issued a Supplemental Decision and Order rescinding a Decision and Order issued to the State of North Carolina (North Carolina) on April 11, 1991. North Carolina had filed an Application for Refund in the crude oil proceeding being administered by the DOE under 10 CFR part 205, subpart V. The DOE had determined that North Carolina's claim was based, in part, on purchases of petroleum products made by school districts within the State. Twenty-seven of those school districts had already filed for and received a refund in the crude oil proceeding. Therefore, the North Carolina claim was reduced by the number of gallons of refined product purchases for which refunds had already granted to those school districts; i.e., 56,376,009 gallons. North Carolina was granted a refund of $624,165 based upon the original claim, 836,582,463 gallons, minus the amount granted the school districts, 56,376,009 gallons, for a total approved gallonage claim of 780,206,454. In addition, the DOE will dismiss the 43 Applications for Refund filed by North Carolina school districts that are still pending.

Texaco Inc./Cleaners Sales & Equipment et al., 5/10/91, RF321-7009 ET AL.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting refunds to nine applicants in the Texaco Inc. special refund proceeding. These applicants, who were all end-users of refined petroleum products purchased from Texaco, were presumed to have been injured by Texaco's alleged overcharges. The nine applicants were granted refunds totalling $1,224,930 ($986,177 principal plus $238,753 interest).

Texaco Inc./Gerstmann Texaco, 5/10/91, RF321-14983

The DOE issued a Supplemental Order regarding Thelma A. Gerstmann, an applicant who received a refund in *Texaco Inc./B & L Auto Parts,* Case Nos. RF321-3605 *et al.* (October 1, 1990). A conflicting claim caused the DOE to review the application. When the DOE requested documents from Ms. Gerstmann to substantiate her claim, the applicant did not respond. Therefore, the applicant was ordered to remit $2,875 (the amount of her refund plus interest that would have accrued in escrow to the current date) to the DOE to be deposited in the escrow account funded by Texaco Inc.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name of firm	Case No.	Received
Agway, Inc./Clark's Petroleum Service, Inc. *et al.*	RF324-7	05/06/91
Atlantic Richfield Co./Clayton & LaGrand Neilson *et al.*	RF304-4159	05/07/91
Atlantic Richfield Co./Larkin Oil Company *et al.*	RF304-3433	05/07/91
Atlantic Richfield Co./Mac's Arco Service *et al.*	RF304-10300	05/07/91
Chesapeake Corporation.	RF272-54218	05/09/91
Chicago Transit Authority.	RC272-118	05/09/91
City Public Service	RF272-49572	05/09/91
Exxon Corporation/ Colonial Oil Industries, Inc.	RF307-8937	05/10/91
Gulf Oil Corp./Arrow Oil Company.	RF300-11194	05/10/91
Gulf Oil Corp./ Holloway Construction *et al.*	RF300-11405	05/10/91
Gulf Oil Corp./John W. Clark Oil Co., Inc. *et al.*	RF300-11537	05/10/91
Jack Robinson & Sons, Inc. *et al.*	RF272-77125	05/07/91
Lee County School District No. 1 *et al.*	RF272-78786	05/07/91
Mitchell Energy and Development Corporation.	RF272-44116	05/06/91
Morton-Thiokol, Inc., Morton Salt Division.	RF272-16036	05/08/91
Morton-Thiokol, Inc., Mortonsalt Division.	RF272-16036	
Murphy Oil Corp./ Quality Oil Company.	RF309-847	05/07/91
Ohio State Highway Patrol.	RF272-44094	05/08/91
P.K. McCuiston	RF272-49755	05/06/91
Half Circle W. Bar Ranch.	RF272-49970	
Power Authority of the State of New York.	RF272-54935	05/10/91
Rippey Farmers Co-Op.	RF272-67787	05/07/91
Shell Oil Company/ Feeney Oil Co., Inc. *et al.*	RF315-418	05/10/91
Shell Oil Company/ Itin Services Inc.	RF315-695	05/07/91

Name of firm	Case No.	Received
Tesoro Petroleum Corporaton/Shell Oil Company *et al.*	RF326-88	05/07/91
Texaco Inc./A-1 Texaco Service *et al.*	RF321-6926	05/06/91
Texaco Inc./Bryant & Blount Oil Co. *et al.*	RF321-900	05/08/91
Texaco Inc./Corrigan Texaco Service *et al.*	RF321-7100	05/09/91
Texaco Inc./Holmes Texaco Service *et al.*	RF321-1540	05/08/91
Texaco Inc./Johnny Class.	RF321-7499	05/06/91
Johnny's Texaco	RF321-7501	
San Bernard Texaco	RF321-13039	
Fatjo's Texaco	RF321-13533	
Texaco Inc./ Radke Oil Company *et al.*	RF321-7427	05/08/91
Texaco Inc./Ray's Texaco *et al.*	RF321-2016	05/09/91
Texaco Inc./Roger Manning Texaco *et al.*	RF321-5918	05/09/91
Texaco Inc./Tom J. Fatjo, Sr.	RF321-7500	05/07/91
Downtown Texaco	RF321-7503	
Texaco Inc./Traillake Texaco *et al.*	RF321-1422	05/08/91
Texaco Inc./Tucker Oil Company, Inc. *et al.*	RF321-4922	05/09/91
Time Oil Company/ J.C. Penney Co., Inc.	RF334-5	05/09/91
Fred Meyers, Inc	RF334-6	
Time Oil Company/ Schroeder Fuel Company.	RF334-7	05/10/91
Two "R" Drilling Co., Inc.	RF272-23297	05/07/91
Two "R" Drilling Co., Inc.	RD272-23297	

Dismissals

The following submissions were dismissed:

Name	Case No.
Alliance Oil Service	RF304-3441
Baker Brothers Texaco	RF321-9651
Bethlehem Steel Corp	RF304-4338
Bill Starovich's Texaco Service	RF321-10523
Bridgeville Coal & Oil Co	RF304-4055
Brown's Gulf Service	RF300-12319
Carl D. Gove	RF321-13667
Carrington James Arco	RF304-3555
Delco Remy Division—GMC	RF304-4448
Dom's Atlantic Service	RF304-3506
Ed Howe's Arco	RF304-8101
Expressway Texaco Service	RF321-7603
General Motors Corp.—CFD	RF304-2775
Gerry Finkes Marine Corp	RF321-3628
Howard D. Field	RF315-8653
Joy-Maurice Ent. Inc	RF315-10141
Leonard's Arco	RF304-9289
Lynne Oil Company	RF321-14696
Mario's Texaco	RF321-8415
Newtown Shell	RF315-8656
Northtown Plaza Texaco	RF321-4955
Parkside Arco	RF304-9305
Parkside Arco	RF304-9304

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 3, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-16423 Filed 7-9-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 1G3964/T610; FRL 3926-5]

Consep Membranes, Inc.; Establishment of an Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established an exemption from the requirement of a tolerance for the combined residues of the pheromone codlure, (E,E)-8,10-Dodecadien-1-ol, in or on all raw agricultural commodities when applied to the branches of trees via a membrane-type dispenser.

DATES: This temporary exemption from the requirement of a tolerance expires October 1, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2690).

SUPPLEMENTARY INFORMATION: Consep Membranes, Inc., c/o Walter Talarek, Esq., 1577 Springhill Rd., suite 600, Vienna, VA 22182-7501, has requested in pesticide petition PP 1G3964, the establishment of an exemption from the requirement of a tolerance for the combined residues of the pheromone codlure, (E,E)-8,10-Dodecadien-1-ol, in or on all raw agricultural commodities when applied to the branches of trees via a membrane-type dispenser.

This temporary exemption from the requirement of a tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 56336-EUP-2, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be use must not exceed the quantity authorized by the experimental use permit.

2. Consep Membranes, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires October 1, 1992. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use premit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial

number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: June 23, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-16122; Filed 7-9-91; 8:45 am]

BILLING CODE 6560-50-F

[PP 1G3927/T609; FRL 3926-9]

Fenoxaprop-ethyl; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the herbicide fenoxaprop-ethyl and its metabolites in or on the raw agricultural commodity barley, grain at 0.05 part per million (ppm).

DATES: This temporary tolerance expires April 10, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1830.

SUPPLEMENTARY INFORMATION: Hoechst Celanese Corp, Route 202-205, P.O. Box 2500, Somerville, NJ 08876-1258, has requested in pesticide petition (PP) 1G3927, the establishment of a temporary tolerance for the combined residues of the herbicide fenoxaprop-ethyl ((±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate)) and its metabolites [2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one], each expressed as fenoxaprop-ethyl, in or on the raw agricultural commodity barley, grain at 0.05 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 8340-EUP-13, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst Celanese Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 10, 1992. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: June 9, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-16121 Filed 7-9-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66148A; FRL-3934-1]

Phenylmercuric Acetate; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation order.

SUMMARY: Pursuant to a request for voluntary cancellation submitted by the registrant Troy Chemical Corporation ("Troy"), EPA is cancelling the registration for the pesticide product Troysan PMA-100, EPA Registration No. 5383-4. Effective on July 1, 1991, EPA will not permit any further distribution or sale of this product. Manufacturers of exterior paints and coatings may continue to use all stocks of this product which were packaged and labeled with the registered labeling by Troy on or before February 28, 1991, and which were purchased by and delivered to the end-user on or before June 27, 1991.

DATES: This cancellation order will be effective on July 1, 1991. EPA will permit stocks of Troysan PMA-100 which were packaged and labeled with the registered labeling by Troy on or before February 28, 1991, and which were purchased by and delivered to the end-user on or before June 27, 1991, to be used in manufacture of exterior paints and coatings.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8010.

SUPPLEMENTARY INFORMATION:

I. Background

In a letter dated November 26, 1990, Troy submitted a request for voluntary cancellation of Troysan PMA-100, EPA Registration No. 5383-4. In its initial request, Troy advised EPA that it was immediately ceasing all production of Troysan PMA-100 and requested that EPA permit sale, distribution, and use of existing stocks of Troysan PMA-100 until November 26, 1991. In subsequent discussions, EPA indicated to Troy that it would not be willing to permit sale and distribution of Troysan PMA-100 after June 27, 1991, or use of any stocks of Troysan PMA-100 purchased by the user after June 27, 1991. On February 28, 1991, Troy wrote an additional letter to EPA confirming its prior request for voluntary cancellation and accepting the existing stocks provisions specified by EPA. EPA published a notice of

voluntary cancellation for Troysan PMA-100 in the **Federal Register** of May 31, 1991 (56 FR 24809). Further information on the background and the basis for this action may be found in that notice.

II. Cancellation Order

Effective on July 1, 1991, the registration for Troysan PMA-100, EPA Registration No. 5383-4, is cancelled pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. section 136d(f)(1). Effective on July 1, 1991, it shall be unlawful under FIFRA section 12(a)(1)(A) and/or FIFRA section 12(a)(2)(K), 7 U.S.C. sections 136j(a)(1)(A), 136j(a)(2)(K), for any person to distribute or sell Troysan PMA-100 in any State. Effective on July 1, 1991, it shall be unlawful under FIFRA section 12(a)(2)(K), 7 U.S.C. section 136j(a)(2)(K), for any person to use Troysan PMA-100 for any pesticidal purpose in any State, except as specifically provided below.

For purposes of this order, existing stocks are defined as stocks which were in the United States and packaged and labeled with the registered labeling on or before July 1, 1991, the effective date of cancellation. Existing stocks of Troysan PMA-100 which were packaged and labeled with the registered labeling by Troy Chemical Corporation on or before February 28, 1991, and which were purchased by and delivered to the end-user on or before June 27, 1991, may continue to be used in the manufacture of exterior paints and coatings, subject to the following mandatory terms and conditions. No existing stocks of Troysan PMA-100 may be used which do not bear the registered labeling: (1) Prohibiting use of the product in manufacture or formulation of any paint or coating intended or labeled for interior use, (2) limiting use of the product in exterior paints and coatings to only those products which are labeled with a warning against interior use, and (3) specifying maximum application rates for use in exterior paints and coatings. All use of existing stocks of Troysan PMA-100 must also be in full conformity with all label requirements.

Dated: July 1, 1991.

Stan A. Abramson,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-16417 Filed 7-9-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66149A; FRL-3934-2]

Phenylmercuric Acetate; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation order.

SUMMARY: Pursuant to a request for voluntary cancellation submitted by the registrant Cosan Chemical Corporation ("Cosan"), EPA is cancelling the registration for the pesticide product Cosan PMA-100, EPA Registration No. 8489-5. The cancellation of this product will be effective on July 1, 1991. EPA will permit sale and distribution of existing stocks of this product bearing the registered labeling until September 30, 1991. Manufacturers of exterior paints and coatings may continue to use all stocks of this product which were packaged and labeled with the registered labeling by Cosan on or before July 1, 1991, and which are purchased by and delivered to the end-user on or before September 30, 1991.

DATES: This cancellation order will be effective on July 1, 1991. EPA will permit stocks of Cosan PMA-100 bearing the registered labeling to be sold and distributed until September 30, 1991. EPA will also permit stocks of Cosan PMA-100 which were packaged and labeled with the registered labeling by Cosan on or before July 1, 1991, and which are purchased by and delivered to the end-user on or before September 30, 1991, to be used in manufacture of exterior paints and coatings.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8010.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1991, EPA advised Cosan representatives that it intended to issue a notice of intent to cancel Cosan PMA-100, EPA Registration No. 8489-5, pursuant to FIFRA section 6(e), based on the failure of Cosan to satisfy certain conditions regarding development and submission of data included in the conditional registration for the product. At that time, EPA suggested that Cosan consider requesting voluntary cancellation of Cosan PMA-100. In subsequent discussions, EPA and Cosan discussed the options available to Cosan, the scope and potential outcomes of a cancellation hearing, and the provisions for sale, distribution, and use of existing stocks to be incorporated in a cancellation order. On May 10, 1991, Cosan submitted the request for voluntary cancellation which is the basis for this cancellation order. EPA published a notice of voluntary cancellation for Cosan PMA-100 in the **Federal Register** of May 31, 1991 (56 FR 24807). Further information on the background and the basis for this action may be found in that notice.

II. Cancellation Order

Effective on July 1, 1991, the registration for Cosan PMA-100, EPA Registration No. 8489-5, is cancelled pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. section 136d(f)(1). Effective on July 1, 1991, it shall be unlawful under FIFRA section 12(a)(1)(A) and/or FIFRA section 12(a)(2)(K), 7 U.S.C. sections 136j(a)(1)(A), 136j(a)(2)(K), for any person to distribute or sell Cosan PMA-100 in any State, except as specifically provided below. Effective on July 1, 1991, it shall be unlawful under FIFRA section 12(a)(2)(K), 7 U.S.C. section 136j(a)(2)(K), for any person to use Cosan PMA-100 for any pesticidal purpose in any State, except as specifically provided below.

For purposes of this order, existing stocks are defined as stocks which were in the United States and packaged and labeled with the registered labeling on or before July 1, 1991, the effective date of cancellation. Existing stocks of Cosan PMA-100 may be sold and distributed until September 30, 1991, subject to the mandatory terms and conditions below. Existing stocks of Cosan PMA-100 which were packaged and labeled with the registered labeling by Cosan Chemical Corporation on or before July 1, 1991, and which are purchased by and delivered to the end-user on or before September 30, 1991, may continue to be used in the manufacture of exterior paints and coatings, subject to the following mandatory terms and conditions. No existing stocks of Cosan PMA-100 may be sold, distributed, or used which do not bear the registered labeling: (1) Prohibiting use of the product in manufacture or formulation of any paint or coating intended or labeled for interior use, (2) limiting use of the product in exterior paints and coatings to only those products which are labeled with a warning against interior use, and (3) specifying maximum application rates for use in exterior paints and coatings. All use of existing stocks of Cosan PMA-100 must also be

in full conformity with all label requirements.

Dated: July 1, 1991.

Allan S. Abramson,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-16418 Filed 7-9-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3973-3]

Proposed De Minimis Settlement Under 122(g), Colorado Avenue Subsite, Hastings Ground Water Contamination Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement under 122(g), Colorado Avenue Subsite.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a de minimis administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9622(g). This settlement is intended to resolve the liabilities of two parties for the response costs incurred and to be incurred at the Colorado Avenue Subsite of the Hastings Groundwater Contamination Site, Hastings, Nebraska.

DATES: Written comments must be provided on or before August 4, 1991.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of the Colorado Avenue Subsite of the Hastings Groundwater Contamination Site, Hastings, Nebraska, EPA Docket No. VII-90-F-0025.

FOR FURTHER INFORMATION CONTACT: Audrey Asher, United States Environmental Protection Agency, Office of Regional Counsel, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7255.

SUPPLEMENTARY INFORMATION: The proposed settlers are the Burlington Northern Railroad (BNRR), Morton Zuber and Zuber Company (collectively Zuber), parties who own property that is part of the Colorado Avenue Subsite of the Hastings Gound Water Contamination Site. Trichloroethylene (TCE), 1,1,1-trichloroethane (TCA) and tetrachloroethene (PCE) have been detected in the soil and ground water at the Colorado Avenue Subsite and downgradient from the subsite. Contamination was first discovered on the BNRR property in 1986 and on the Zuber property in 1988 when soil sampling was undertaken. BNRR and Zuber had acquired their properties at the Colorado Avenue subsite in 1871 and 1984, respectively; in both cases, ownership preceded discovery of contamination.

EPA's investigation of the source of the Colorado Avenue Subsite contamination revealed that neither the BNRR nor Zuber has generated, stored, treated, or disposed of the contaminants found at the Colorado Avenue subsite. EPA's investigation also revealed that TCE and TCA were stored and disposed at property adjacent to and upgradient from the Zuber and BNRR property. This property, located at 108 S. Colorado Avenue, has been a manufacturing facility for several decades.

EPA has selected soil vapor extraction (SVE) as the technology to remediate the contaminated soils at the Colorado Avenue Subsite. Location of the SVE system will be on an area owned by BNRR and Zuber. Access is needed onto the BNRR and Zuber properties for installation of equipment, storage of equipment and operation of equipment.

This proposed settlement will provide access to EPA, the state of Nebraska, and parties designated by EPA as its representative solely for the purpose of access, for thirty years or until EPA determines that all response actions are completed, whichever is first. This proposed settlement also requires Zuber to clear the area in preparation for access to drill deep wells and to trench to make connections. Additionally, this proposed settlement requires BNRR and Zuber, upon transfer of title or arrangement for lease, to enter into a written agreement with the subsequent owner or lessee that requires such party to provide access to EPA to the same extent as set forth in the de minimis agreement. Access that may be needed as part of subsequent ground water remediation is also covered in this proposed settlement.

The proposed settlement involves no financial terms; the proposed settling parties are being asked solely to grant access. The proposed de minimis settlement provides that EPA will convenant not to sue the de minimis parties for response costs or for injunctive relief pursuant to sections 106 and 107 of CERCLA and section 7003 of Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973. The proposed settlement contains a reopener if any information becomes known to EPA that indicates any of the proposed settlers (1) conducted or permitted the generation, transportation, storage, treatment, or disposal of any hazardous substance at the subsite; (2) contributed to a release or threat of release of a hazardous substance at the subsite through any act or omission; (3) or that the proposed settling parties otherwise no longer meet the section 122(g)(1)(B) de minimis criteria.

Martha Steincamp,

Acting Regional Administrator.

[FR Doc. 91-16419 Filed 7-9-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-909-DR]

Alaska; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-909-DR), dated May 30, 1991, and related determinations.

DATES: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Alaska, dated May 30, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 30, 1991:

The communities of Alakanuk, Emmonak, Galena, and Shageluk for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-16393 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-909-DR]

Alaska; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–909–DR), dated May 30, 1991, and related determinations.

DATES: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is revised to be April 15 to May 25, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–16394 Filed 7–9–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–910–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–910–DR), dated June 21, 1991, and related determinations.

DATES: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated June 21, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms and flooding beginning on May 24, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

The counties of Dickson, Hardin, Hickman, Humphreys, Lawrence, Lewis, Perry, and Wayne for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–16395 Filed 7–9–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–910–DR]

Tennessee; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–910–DR), dated June 21, 1991, and related determinations.

DATES: June 26, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective June 26, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–16396 Filed 7–9–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–902–DR]

Louisiana; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–902–DR), dated April 23, 1991, and related determinations.

DATES: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated April 23, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1991:

The parishes of Lafourche, Rapides, and Terrebonne for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–16386 Filed 7–9–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Louisiana; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATES: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration May 3, 1991:

The parishes of Assumption, Caldwell, Catahoula, Concordia, Iberville and St.

Martin for Public Assistance (previously designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-16387 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATES: June 20, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

The Parishes of Avoyelles, Caddo, East Carroll, Franklin, Grant, LaFourche, Madison, St. Charles, Terrebonne, West Carroll for Public Assistance (previously designated for Individual Assistance).

The Parishes of Beauregard, Bossier, Red River, and Tensas for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-16388 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Mississippi; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATES: June 25, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

The counties of Choctaw and Tippah for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-16389 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-907-DR]

Arkansas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA-907-DR), dated May 30, 1991, and related determinations.

DATES: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Arkansas, dated May 30, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 30, 1991:

The counties of Madison and Sharp for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-16390 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-908-DR]

Nebraska; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the state of Nebraska (FEMA-908-DR), dated May 28, 1991, and related determinations.

DATES: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistnace Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective June 15, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-16391 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-908-DR]

Nebraska; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska (FEMA-908-DR), dated May 28, 1991, and related determinations.

DATES: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Nebraska, dated May 28, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 28, 1991:

Cuming County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-16392 Filed 7-9-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Cooper/T. Smith Corp.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200491–001.

Title: Independent Marine Terminal Discussion Agreement.

Parties: Cooper/T. Smith Cooperation, Continental Stevedoring & Terminals, Inc., Eller & Company, Inc., Harrington & Company, Inc., International Terminal Operating Co., Inc., Maher Terminals, Inc., Marine Terminals Corp., Metropolitan Stevedore Company, Ryan-Walsh, Inc., Stevedoring Services of America.

Synopsis: The Agreement, filed July 3, 1991, amends and restates certain provisions of the basic proposed agreement to provide that the parties: (1) Shall be privately owned (non-government) independent marine terminal operators which provide marine terminal facilities/services in connection with common carriers by water in the foreign commerce of the United States, but which are neither controlled nor owned by or related to such carriers; (2) are authorized to meet and discuss marine terminal practices and conditions at United States ports and to agree upon positions, initiatives, actions, remedies, or recommendations which may be made to or taken before ports, other marine terminal operators, or government entities and to exchange information related to the activities authorized by the Agreement; and (3) are not authorized to concertedly establish rates and practices among themselves. The parties have requested shortened review to permit its effectiveness simultaneously with the basic agreement's scheduled effective date of July 25, 1991.

By Order of the Federal Maritime Commission.

Dated: July 3, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–16323 Filed 7–9–91; 8:45 am]

BILLING CODE 6730–0–1–M

Compania Trasatlantic Espanola, S.A., et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 72.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before comunicating with the Commission regarding a pending agreement.

Agreement No.: 212–011213–021.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties: Compania Trasatlantic Espanola, S.A., d'Amico Societa de Navigazione, S.p.A., Nordana Line A/S, Sea-Land Service, Inc.

Synopsis: The proposed amendment would add language to the agreement to clarify the circumstances under which a voyage will be counted towards the minimum service obligations of a member in the Italian and Spanish Sections of the Agreement.

Agreement No.: 202–011336.

Title: Venezuelan/Sea-Land Cooperative Working Agreement.

Parties: Venezuelan Container Line, C.A. Sea-Land Service, Inc.

Synopsis: The proposed Agreement would authorize the parties to charter space to each other, coordinate sailings, pool revenues and expenses, appoint common general agents, use common terminal facilities, lease or sublease containers, fix rates, adopt bill of lading terms and conditions and agree upon administrative matters in the trade between the United States and Venezuela. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 3, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–16300 Filed 7–9–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barclays PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 29, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Barclays PLC, London, England, Barclays Bank PLC, London, England, BayBanks, Inc., Boston, Massachusetts, Chemical Banking Corporation, New York, New York, Manufacturers Hanover Corporation, New York, New York, National Westminster Bank PLC, London, England, NatWest Holdings, Inc., New York, New York, Northeast Bancorp, Inc., New Haven, Connecticut, The Bank of New York Company, Inc., New York, New York, The Chase Manhattan Corporation, New York, New York, HSBC Holdings, PLC, London, England, The Hongkong and Shanghai Banking Corporation Limited, Hong Kong, B.C.C., Kellett NV, Curacao, Netherlands Antilles, HSBC Holdings BV, Amsterdam, The Netherlands, and Marine Midland Banks, Inc., Buffalo, New York; to acquire The New York Switch Corporation, Fort Lee, New Jersey, and thereby engage in expansion of certain data processing activities permitted pursuant to § 225.25(b)(7) of the Board's Regulation Y, including the ownership, installation, operation and maintenance of automated teller machines and scrip terminals at supermarket and other merchant locations in the state of New Jersey.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Irish Banks Limited plc, Dublin, Ireland, and First Maryland Bancorp, Baltimore, Maryland; to acquire Internet, Inc., Reston, Virginia, and thereby engage in the business of providing data processing switching services for automatic teller machines and point of sale networks pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First Alabama Bancshares, Inc., Montgomery, Alabama; to establish Sunshine Federal Savings Bank, Pensacola, Florida, to facilitate the acquisition of the Pensacola, Florida branch offices of Great Western Bank, FSB, Beverly Hills, California, and to merge Sunshine Federal Savings Bank with and into its bank subsidiary, Sunshine Bank, Pensacola, Florida.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. CNBC Bancorp, Inc., Chicago, Illinois; to acquire Fort Dearborn Federal Savings and Loan Association, Chicago, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y and to merge the savings association with its subsidiary bank, Columbia National Bank of Chicago, Chicago, Illinois, pursuant to the Oakar Amendment in section 206 of FIRREA. These activities will be conducted in the State of Illinois.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Yutan BanCorp, Inc., Yutan, Nebraska; to acquire Yutan Insurance Agency, Inc., Yutan, Nebraska, and thereby engage in the sale of general insurance (excluding life insurance and annuities) pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16295 Filed 7-9-91; 8:45 am]

BILLING CODE 6210-01-F

Commercial BancShares, Incorporated, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Commercial BancShares, Incorporated, Parkersburg, West Virginia; to acquire 100 percent of the voting shares of The Dime Bank, Marietta, Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Peoples Bancholding Company, Inc., Moulton, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Lawrence County, Moulton, Alabama, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Citizens Holding Company, Sac City, Iowa; to acquire 11.88 percent of the voting shares of Union State Bank, Winterset, Iowa.

2. First Colonial Bankshares Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of First Colonial Bank of McHenry County, Crystal Lake, Illinois, a *de novo* bank.

3. First of America Bank Corporation, Kalamazoo, Michigan; to merge with Morgan Community Bancorp, Inc., Jacksonville, Illinois, and threby indirectly acquire Morgan County Community Bank, Jacksonville, Illinois.

4. Morgan Community Bancorp, Inc., Jacksonville, Illinois; to acquire 100 percent of the voting shares of First of America Bank-Springfield, National Association, Springfield, Illinois.

5. West Bend Bancorp, West Bend, Iowa; to become a bank holding company by acquiring at least 90 percent of the voting shares of Iowa State Bank, West Bend, Iowa.

6. Westchester Financial Corporation, Naperville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Channahon, Channahon, Illinois, a *de novo* bank.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Farmers and Merchants Investment Co., Watertown, South Dakota; to acquire 65 percent of the voting shares of Rushmore Financial Services, Inc., Watertown, South Dakota. In connection with this application, Rushmore Financial Services, Inc., Watertown, South Dakota. has applied to become a bank holding company by acquiring 90 percent of the voting shares of Rushmore State Bank, Rapid City, South Dakota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Laurel Security Company, Laurel, Nebraska; to acquire 100 percent of the voting shares of First Osmond Corporation, Osmond, Nebraska, and thereby indirectly acquire Osmond State Bank, Osmond, Nebraska.

2. First Medicine Lodge Bancshares, Inc., Medicine Lodge, Kansas; to merge with C-M Company, Inc., Medicine Lodge, Kansas, and thereby indirectly acquire Isabel State Bank, Isabel, Kansas.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Crowell Bancshares, Inc., Crowell, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Crowell State Bank, Crowell, Texas.

2. Henderson Citizens Bancshares, Inc., Henderson, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Henderson Citizens De Bancs., Inc., Dover, Delaware, and thereby indirectly acquire Citizens National Bank of Henderson, Henderson, Texas.

3. Henderson Citizens Delaware Bancshares, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Henderson, Henderson, Texas.

4. IBI Investment, Ltd., Irving, Texas; to become a bank holding company by acquiring 24.9 percent of the voting shares of Inwood Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Inwood National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, July 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16296 Filed 7-9-91; 8:45 am]

BILLING CODE 6210-01-F

The Fuji Bank, Limited, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Fuji Bank, Limited, Tokyo, Japan; to engage *de novo* in operating a collection agency for the collection of overdue accounts receivable, either retail or commercial, pursuant to § 225.25(b)(23) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Salin Bancshares, Inc., Indianapolis, Indiana; to engage *de novo* through its subsidiary, Admiral Insurance Company, Indianpolis, Indiana, in underwriting and acting as a principal for credit insurance, including home mortgage insurance, that is directly related to an extension of credit of one of Salin's subsidiaries, and will be limited to insuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Indiana.

2. Seaway Bancshares, Inc., Chicago, Illinois; to engage *de novo* through its subsidiary, Seaway Investment Management Company, Chicago, Illinois, in providing financial and investment advisory services to public and private pension plans and other institutional investors pursuant to § 225.25(b)(4)(iii) and (v) of the Board's Regulation Y.

3. Stichting Prioriteit ABN AMRO HOLDING, Amsterdam, The Netherlands, Stichting Administratiekantoor ABN AMRO HOLDING, Amsterdam, The Netherlands; ABN AMRO Holding N.V., Amsterdam, The Netherlands, and Algemene Bank Nederland N.V., Amsterdam, The Netherlands; to engage *de novo* through their subsidiary, Lease Plan U.S.A., Inc., Atlanta, Georgia, in leasing activities to include the offering of lease terms for personal property (and acting as an agent, broker or adviser with respect to leases having such lease terms) in which the lessor may rely for its compensation on an estimated residual value of the leased property at the expiration of the initial lease term of up to 100 percent of the acquisition cost of the property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted throughout the world.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. National Bancorp of Alaska, Inc., Anchorage, Alaska; to engage *de novo* in making and servicing tax-exempt loans pursuant to § 225.25(b)(1); and underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16297 Filed 7-9-91; 8:45 am]

BILLING CODE 6210-01-F

Peter M. Mott, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 29, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Peter M. Mott, Grosse Point, Michigan, to retain 10.25 percent of the voting shares of Kingston State Bank, Kingston, Michigan.

2. Brian D. and Janice A. Veach, Grinnell, Iowa, and Alan R. and Ann Marie Knaack, Grinnell, Iowa; to acquire 100 percent of the voting shares of Hartwick Bancshares, Inc., Grinnell, Iowa, and thereby indirectly acquire Hartwick State Bank, Hartwick, Iowa.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Thomas C. Adam, Pierre, South Dakota; to acquire an additional 37.50 percent for a total of 50 percent of the voting shares of Blunt Bank Holding Company, Blunt, South Dakota, and thereby indirectly acquire Dakota State Bank, Blunt, South Dakota.

2. William and Sandra Pell, to acquire an additional 0.25 percent of the voting shares of Bancommunity Service Corporation, St. Peter, Minnesota, for a total of 10.11 percent, and thereby indirectly acquire First National Bank of Saint Peter, St. Peter, Minnesota, and Security Shares, Inc., Mankato, Minnesota, and thereby indirectly acquire Security State Bank of Mankato, Mankato, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Charles D. Maxwell, Cameron, Missouri; to acquire an additional 1.43 percent for a total of 5.87 percent; Charles D. Maxwell, trustee of the Martin O'Neal Trust, to acquire an additional 1.94 percent for a total of 7.99 percent; Sam S. Hiner, Raytown, Missouri, to acquire an additional 2.78 percent for a total of 11.42 percent; Mary Margaret Parrish, Liberty, Missouri, to acquire an additional 0.03 percent for a total of 0.12 percent; Charles F. or Margaret J. Hinchey, or Mary Margaret Parrish, Chillicothe, Missouri, to acquire an additional 2.69 percent of the voting shares for a total of 11.07 percent; Charles F. Hinchey, Chillicothe, Missouri, to acquire an additional 0.01 percent for a total of 0.04 percent of the voting shares of FSC Bancshares, Inc., Cameron, Missouri, and thereby indirectly acquire Farmers State Bank, Cameron, Missouri.

2. Sam L. Moyer, as trustee for the Mary Pat Woodard Trust No. 2, Aurora, Nebraska; to acquire an additional 31.9 percent of the voting shares of Aurora First National Company, Aurora, Nebraska, for a total of 56.8 percent, and thereby indirectly acquire First National Bank & Trust Company in Aurora, Aurora, Nebraska.

3. Mrs. Dorothy Whitney, Utica, Kansas; to acquire an additional 7.03 percent of the voting shares of First National Bancshares of Scott City, Ltd., Scott City, Kansas, for a total of 16.99 percent, and thereby indirectly acquire The First National Bank of Scott City, Scott City, Kansas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Committee of the Employee Stock Ownership Plan of Central Pacific Bank, Honolulu, Hawaii; to acquire an additional 2.42 percent of the voting shares of CPB, Inc., Honolulu, Hawaii, for a total of 10.56 percent, and thereby indirectly acquire Central Pacific Bank, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, July 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16298 Filed 7-9-91; 8:45 am]

BILLING CODE 6210-01-F

NBD Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan; to acquire 100 percent of the voting shares of FNW Bancorp, Inc., Mount Prospect, Illinois; and thereby indirectly acquire Countryside Bank of Stratford, Bloomingdale, Illinois; The First National Bank of Elgin, Elgin, Illinois; The Larkin Bank, Elgin, Illinois; The First National Bank of Lake Zurich, Lake Zurich, Illinois; The Heritage Bank of Lemont, Lemont, Illinois; Countryside Bank, Mount Prospect, Illinois; The First National Bank of Mount Prospect, Mount Prospect, Illinois; and The Heritage Bank, Woodridge, Illinois.

In connection with this application, Applicant also proposes to acquire FNW Capital, Inc., Mount Prospect, Illinois,

and thereby engage in commercial leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

2. NBD Illinois, Inc., Park Ridge, Illinois; to merge with FNW Bancorp, Inc., Mount Prospect, Illinois; and thereby indirectly acquire Countryside Bank of Stratford, Bloomingdale, Illinois; The First National Bank of Elgin, Elgin, Illinois; The Larkin Bank, Elgin, Illinois; The First National Bank of Lake Zurich, Lake Zurich, Illinois; The Heritage Bank of Lemont, Lemont, Illinois; Countryside Bank, Mount Prospect, Illinois; The First National Bank of Mount Prospect, Mount Prospect, Illinois; and The Heritage Bank, Woodridge, Illinois.

In connection with this application, Applicant also proposes to acquire FNW Capital, Inc., Mount Prospect, Illinois, and thereby engage in commercial leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16299 Filed 7-9-91; 8:45 am]

BILLING CODE 6210-01-F

The Mitsubishi Bank, Limited, Tokyo, Japan; Application to Provide Investment Advice and Execution and Clearance Services Regarding Certain Futures Contracts and Options on Futures Contracts

The Mitsubishi Bank, Limited, Tokyo, Japan ("Mitsubishi"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly-owned subsidiary, Mitsubishi Financial Futures, Inc., Chicago, Illinois ("Company"), to provide investment advice and execution and clearance services regarding financial futures contracts on the following stock and bond indices traded on major commodity exchanges in accordance with and pursuant to the limitations provided in §§ 225.25(b)(18) and (19) of the Board's Regulation Y (12 CFR 225.25(b)(18) and (19)):

(1) Standard & Poor's 500 Stock Price Index (Chicago Mercantile Exchange);

(2) Nikkei Stock Average (Chicago Mercantile Exchange);

(3) Major Market Index (Chicago Board of Trade);

(4) Long-Term Municipal Bond Index (Chicago Board of Trade);

(5) New York Stock Exchange Composite Index (New York Futures Exchange);

(6) Value Line Average Stock Index (Kansas City Board of Trade);

(7) Mini Value Line Average Stock Index (Kansas City Board of Trade);

(8) Financial Times-Stock Exchange 100 Index (London International Financial Futures Exchange); and

(9) Nikkei Stock Average (Singapore International Monetary Exchange).

Mitsubishi has also applied through Company to provide investment advice and execution and clearance services in accordance with and pursuant to the limitations provided in §§ 225.25(b)(18) and (19) of the Board's Regulation Y (12 CFR 225.25(b)(18) and (19)) regarding the following options on futures contracts on the following stock and bond indices traded on major commodity exchanges:

(1) Standard & Poor's 500 Stock Price Index (Chicago Mercantile Exchange);

(2) Nikkei Stock Average (Chicago Mercantile Exchange);

(3) New York Stock Exchange Composite Index (New York Futures Exchange); and

(4) Long-Term Municipal Bond Index (Chicago Board of Trade).

Company proposes to conduct the futures and options on futures activities on a worldwide basis.

Company currently engages in acting as a futures commission merchant ("FCM") for affiliated and nonaffiliated persons in the execution and clearance on major commodity exchanges of certain futures contracts and options on futures contracts in accordance with the limitations of and pursuant to § 25.25(b)(18) of the Board's Regulation Y (12 CFR 225.25(b)(18).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Mitsubishi believes that the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

With one exception, the Board has previously approved the provision of investment advice and the execution and clearance services by a FCM regarding all of the proposed stock and bond index futures contracts and options thereon. *See, e.g., The Sanwa Bank, Limited*, 77 Federal Reserve Board 64 (1991); *The Hongkong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990); and *Chemical Banking Corporation*, 76 Federal Reserve Bulletin 660 (1990). The Board has not previously approved the provision of investment advice and execution and clearance services by a FCM regarding the Nikkei Stock Average contract or options thereon traded on the Chicago Mercantile Exchange. Mitsubishi proposes that Company comply with the conditions previously considered by the Board in approving these activities as set forth in §§ 225.25(b)(18) and (19) of Regulation Y.

Mitsubishi states that the proposed activities will benefit the public. It believes that they will promote competition and provide gains in efficiency and added convenience to customers. Mitsubishi also asserts that the proposed activities will not result in any unsound banking practices.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 29, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, July 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16343 Filed 7-9-91; 8:45 am]

BILLING CODE 6210-01-F

Skandinaviska Enskilda Banken; Stockholm, Sweden; Application to Engage in Combined Securities Brokerage and Investment Advisory Services for the Account of Institutional Customers

Skandinaviska Enskilda Banken, Stockholm, Sweden ("S-E Banken"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly-owned subsidiary, Enskilda Securities, Inc., New York, New York ("Company"), to engage *de novo* in the provision of securities brokerage and investment advisory services on a combined basis for institutional customers. Company also proposes to exercise limited

investment discretion on behalf of institutional customers at a customer's specific request and within parameters established by the customer. Company proposes to engage in these activities throughout the United States and abroad.

Company is currently authorized to engage in the provision of securities brokerage services in accordance with the limitations set forth in and pursuant to § 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." S-E Banken believes that the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that, subject to certain conditions, the provision of securities brokerage and investment advisory services on a combined basis for institutional customers is a permissible nonbanking activity for bank holding companies and does not violate the Glass-Steagall Act. *See, e.g., National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988). The Board has also approved, subject to certain conditions, the provision of discretionary investment management services in connection with securities brokerage and investment advisory services. *J.P. Morgan & Company, Inc.*, 73 Federal Reserve Bulletin 810 (1987). S-E Banken proposes that Company conduct these activities in accordance with substantially all of the prudential limitations relied upon by the Board in these orders, except that S-E Banken proposes that (1) Company not be required to compensate affiliates on an arm's length basis for any back-office services or research or investment advice purchased from an affiliate; and (2) Company not be required to notify customers at the time a brokerage order is taken that it is acting as agent or principal, if such is the case, with respect to the security.

S-E Banken states that the proposed activities will benefit the public. It believes that they will promote competition and provide gains in efficiency and added convenience to customers. Moreover, S-E Banken believes that the proposed activities will not result in any unsound banking practices.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 5, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-16344 Filed 7-9-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0197, GSAR part 537: Service Contracting. Contractors must provide information as to the firms' qualifications for GSA contracting officers' use in reaching a responsibility determination, as required by the Federal Acquisition Regulation.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 2,200; annual responses: 1.0; average hours per response: 1.00; burden hours: 2,200.00.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, (202) 501-1224. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: June 28, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-16362 Filed 7-9-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities for Grants for Residency Training in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration (HRSA) announces that applications for Fiscal Year (FY) 1992 Grants for Residency Training in General Internal Medicine and General Pediatrics are being accepted under the authority of section 784, title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. Comments are invited on the proposed funding priorities. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 784 authorizes the award of grants for planning, developing and operating approved residency training programs which emphasize the training of residents for the practice of general internal medicine or general pediatrics. In addition, section 784 authorizes assistance in meeting the cost of supporting residents who are participants in any such program, and who plan to specialize or work in the practice of general internal medicine or general pediatrics. A separate grant

program is in effect for the faculty development component of this provision.

Eligible applicants are accredited schools of medicine and osteopathic medicine, public and private nonprofit hospitals, or other public or private nonprofit entities.

To receive support, programs must meet the requirements of the final regulations as specified in 42 CFR part 57, subpart FF.

The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The grant program for Residency Training in General Internal Medicine and General Pediatrics is related to the priority area of "Clinical Preventive Services." Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project adequately provides for the project requirements set forth in the regulations;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(3) The qualifications of the proposed staff and faculty; and

(4) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preference—funding of a specific category or group of approved applications ahead of other categories or groups of applications.

2. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

The following funding preference was established in FY 1990 after public comment and the Administration is extending this preference in FY 1992.

Established Funding Preference

In the funding of FY 1992 approved applications for Grants for Residency Training in General Internal Medicine and General Pediatrics, a preference will be provided to any approved application which demonstrates continuity of care experiences that meet the following criteria:

Each resident must serve a panel of patients and/or families who recognize him or her as their provider of longitudinal and comprehensive (including preventive and psychosocial) health care. This continuity experience must be scheduled principally in ambulatory care settings described in Project Requirement #9 in the Program Guide. A resident's time in these settings must:

(a) Comprise at least 10 percent of his or her total training time (excluding vacation time) during each year of the program (i.e., at least one half-day per week);

(b) Comprise at least 20 percent of his or her total training time (excluding vacation time) for the entire residency training period; and

(c) Be scheduled in at least 9 months of each year of training.

The following funding priority was established in FY 1989 after public comment and the Administration is extending this priority in FY 1992.

Established Funding Priority

In determining the order of funding of approved applications, the following priority will be applied:

Applications that demonstrate sufficient curricular time and offerings devoted to assuring competence in the prevention, recognition, and treatment of those with HIV/AIDS infection-related diseases.

Proposed Funding Priorities

In addition, for FY 1992, it is proposed that the following funding priorities be applied:

1. Applications that propose to provide educational experiences to demonstrate to residents the provision of primary care services to underserved populations. These experiences must include substantial training involving one or more of the following eligible entities: (1) Inpatient or outpatient health care facilities located in a Health Professional Shortage Area (HPSA), PHS Act, section 332 or in a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b)(3); (2) Community Health Centers currently supported under PHS Act, section 330, Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, or hospitals and/or health care facilities of the Indian Health Service; or (3) Health care facilities that draw at least 50 percent of their teaching program patients from areas or populations designated as HPSAs or MUAs.

Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas.

Section 330(b)(3) establishes Medically Underserved Areas which are areas designated by the PHS, based on four criteria:

(1) Infant mortality rate;

(2) Percentage of the population below the poverty level;

(3) Percentage of the population over age 65; and

(4) Number of practicing primary care physicians per 1,000 population.

Section 330 authorizes support for community health care services to medically underserved populations.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers.

Section 340 authorizes Health Care for the Homeless Program, as used here, means a community-based program of comprehensive primary health care and substance abuse services brought to the homeless population. At a minimum, this program of care and services must be fully integrated and must assure that care, coordination and case management are rigorously employed. A full description of the program may be found in **Federal Register**, (55 FR 31233) (August 1, 1990.)

Public Housing Communities means the residents of low income public housing projects that receive Federal assistance, usually through a local public housing agency, under the provisions of the U.S. Housing Act of 1937.

To meet this priority, 20 percent of each resident's training time over the course of the training program must occur in an eligible facility or facilities as described above. All continuity of care and block training experience in eligible ambulatory and/or inpatient

settings may be counted toward this provision.

This priority will be heavily weighted and is designed to implement HRSA's overall strategy to direct services to those most in need.

2. Applications where the proportion of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) in the first year of residency training during academic years 1988–89 to 1990–91 exceeds 15 percent or the number of current first year underrepresented minority residents exceeds the average of the prior two years by at least two.

These population groups continue to be underrepresented in the medical profession and have insufficient access to primary medical care. Studies show that minority physicians provide a greater proportion of health care for medically underserved populations than other United States physicians. Therefore, increased representation should help promote greater access to health care for these populations.

3. Applications that demonstrate that curricular time and educational offerings will be devoted to demonstrating and achieving better preventive/primary care services for undeserved communities, areas or populations.

This community-oriented primary care teaching focus is important for physicians that will serve in the National Health Service Corps and other shortage sites and it complements the proposed funding priority.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the FY 1992 award cycle, the comment period has been reduced to 30 days. All comments received on or before (30 days from date of publication in the **Federal Register**) will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published indicating whether the proposed funding priorities will be applied.

Written comments should be addressed to: Marc L. Rivo, M.D. M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for FY 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants, and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately 6 months from the first deadline.

The deadline date for receipt of applications for FY 1992 is August 15, 1991. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Requests for application materials and questions regarding grants policy and business management aspects should be directed to: Mrs. Donna Nash, Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Completed applications should be submitted to the Grants Management Officer at the above address.

Should additional programmatic information be required, please contact: Mr. Donald Buysse, Chief, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Rockville, Maryland 20857, Telephone: (301) 443–6820.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and Supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is listed at 93.884 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: May 31, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–16354 Filed 7–9–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, Subcommittee on Activities and Agenda (Working Group), July 25, 1991, at the Hyatt Regency-Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22212.

The entire meeting will be open to the public from 1 pm to 4 pm. Attendance by the public will be limited to space available. Discussions will address the Board's format, agenda items and activities of the National Cancer Advisory Board.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, 9000 Rockville Pike, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and a roster of the Subcommittee members upon request.

Dr. Paulette S. Gray, Subcommittee on Activities and Agenda (Working Group), National Cancer Institute, Westwood Building, room 850, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5515) will furnish substantive program information.

Dated: July 1, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–16329 Filed 7–9–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Boards. The publication of these appointments is required by section

405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4314(c)(4).

DATES: These appointments are effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone Number: 208–6761.

SES Performance Review Boards (PRB)—FY 1991

Assistant Secretary—Fish and Wildlife and Parks

Joseph E. Doddridge (CA), Chairperson
James Spagnole (NC)
June Whelan (NC)
Joseph S. Marler (CA)
Edward Davis (CA)
Don Castleberry (CA)
Jay Gerst (CA)

Assistant Secretary—Indian Affairs

William Bettenberg (CA), Chairperson
David Matheson (NC)
Billie D. Ott (CA)
Edward Parisian (CA)

Assistant Secretary—Land And Minerals Management

Dean Stepanek (CA), Chairperson
Richard Roldan (NC)
Susan Recce-Lamson (NC)
Carson Culp (CA)
Robert Fagin (CA)
Thomas Gernhofer (CA)

Office of the Secretary and Assistant Secretary—Policy, Management and Budget

Mary Ann Lawler (CA), Chairperson
Daniel Shillito (NC)
Jeffrey Arnold (NC)
Jonathan Deason (CA)
Gabe Paone (CA)
Carmen Maymi (CA)
Hazel Elbert (CA)
Marvin Pierce (CA)
Patricia Hastings (CA)

Office of the Solicitor

Martin J. Suuberg (NC), Chairperson
Lynn R. Collins (CA)
Lawrence E. Cox (CA)
Timothy S. Elliott (CA)
Thomas E. Robinson (CA)
Gina Guy (CA)

Assistant Secretary—Water and Science

Peter Bermel (CA), Chairperson
Joseph Hunter (NC)
Donald Glaser (CA)
Lawrence Hancock (CA)
Stanley Sauer (CA)
David Brown (CA)
George Dooley (CA)
Margaret Carpenter (CA)
Margaret Sibley (CA)
John Fisher (CA)

Departmental Performance Review Board

John Schrote (NC), Chairperson
Selma Sierra (NC)
Morris A. Simms (CA)
Doyle G. Frederick (CA)
Jean Baines (CA)
Herbert Cables (CA)
Ruth VanCleve (CA)
J. Austin Burke (CA)
Denise Meridith (CA)

Dated: July 3, 1991.

Approved for the Executive Resources Board:

Charles E. Kay,

Principal Deputy Assistant Secretary—Policy, Management and Budget.

[FR Doc. 91–16333 Filed 7–9–91; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Availability of Draft Recovery Plan for Welsh's Milkweed (Asclepias Welshii), a Plant From Southern Utah and Northern Arizona, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft recovery plan for Welsh's milkweed (*Asclepias welshii*) from sand dunes in Kane County, Utah, and Coconino County, Arizona. This species is known from three populations: The largest population occurs in the Coral Pink Sand Dunes and 10 miles west of Kanab, Utah; and two smaller populations occur in the Sand Hills about 10 miles north of Kanab and in Sand Cove on the Utah-Arizona border about 35 miles east of Kanab, Utah, and Fredonia, Arizona. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 9, 1991, to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104, (801) 524–4430 or (FTS) 588–4430. Written comments and materials regarding this recovery plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservative of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

Welsh's milkweed was listed under the Act as an endangered species and its critical habitat designated on October 28, 1987, (52 FR 41435) due to current and potential threats to the species' population and habitat from habitat destruction as a consequence of intensive recreational off-road vehicle use of its limited habitat. Initial recovery efforts will focus on protecting the species' population and habitat from habitat destroying activities through sections 6, 7, and 9 prohibitions of the Act for plant species. Biological and ecological research of the species biology and its relationship and interaction with its environment is necessary to guide future management of the species population and habitat to ensure its continued survival and the

preservation of the species ecosystem. Additional recovery efforts will focus on inventory of potential habitat and minimum viable population studies of its known populations. Given the species' vulnerability and lack of suitable habitat, it is doubtful that delisting of the species will occur in the foreseeable future.

Public Comments Solicited

The Service solicits written comments on the Welsh's Milkweed Recovery Plan described above. All comments received by the date specified above will be considered prior to approval of the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 3, 1991.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 91-16339 Filed 7-9-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for Marshallia mohrii (Mohr's Barbara's buttons) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Marshallia mohrii* (Mohr's Barbara's buttons). This species is currently known to occur on private lands and on state-maintained highway rights-of-way in Bibb, Cherokee, and Etowah Counties, Alabama; and Floyd County, Georgia. Historical populations from Walker and Cullman Counties, Alabama and Walker County, Georgia have not been relocated in recent years. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 1, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Cary Norquist at the above address (601/965-4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document submitted for review is the draft Mohr's Barbara's buttons (*Marshallia mohrii*) Recovery Plan. This member of the aster family occurs in moist prairie-like openings in woodlands and along shale-bedded streams in Bibb, Cherokee, and Etowah Counties, Alabama; and Floyd County, Georgia. Several populations extend onto highway rights-of-way (ROWs). *Marshallia mohrii* was listed as a threatened species in 1988 due to its restricted range; threats to populations on the ROWs from herbicide application, future road expansion, and use of these ROWs for installation of utility lines; and conversion of suitable habitat for agricultural purposes.

The recovery objective of the proposed plan is to ensure the protection of 15 viable populations representative of its historic range. This will be accomplished through: (1) Protection and management of extant populations through landowner cooperation and regulatory means, (2) monitoring of extant sites and searching for additional populations, (3) conducting demographic studies and gathering information on the species' biology and habitat, and (4) preserving genetic stock through long-term seed storage.

This Plan is being submitted for Agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 28, 1991.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 91-16366 Filed 7-9-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[OR-050-4410-10; GP1-272]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on August 8 and 9, 1991. The meeting will be in the form of a tour of public lands issues in Grant and Wheeler Counties. The tour will begin at the Prineville BLM office located at 185 E. Fourth Street in Prineville, Oregon beginning at 10 a.m. The agenda will include the following items: (1) discussion of the John Day River Management Plan and other Wild and Scenic River issues within the Prineville District; and (2) a discussion of the land exchange, range management and ripartian programs, as well as other issues to be addressed in the upcoming revision of the Two Rivers and John Day Resource Management Plans.

The meeting is open to the public, however, transportation, food and lodging will not be provided. Anyone wishing to attend and/or make written or oral comments to the Board is requested to contact the Distict Manager prior to August 1, 1991.

Dated: June 28, 1991.
James L. Hancock,
District Manager.
[FR Doc. 91-16368 Filed 7-9-91; 8:45 am]
BILLING CODE 4310-33-M

[CA-940-01-5410-10-B022; CACA 28336]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, containing 665.44 acres, are segregated and made unavailable for filings under the general mining laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land then the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E-2845, Sacramento, California 95825 (916) 978-4820.

Serial No. CACA 28336

T. 11 N., R. 3 W., San Bernardino Meridian
sec. 18, all.
County—Kern
Minerals Reservation—All coal and other minerals except NE¼NE¼ sec. 18 which only reserves the oil and gas.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining laws. The segregation effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: June 28, 1991.
Nancy J. Alex,
Chief, Lands Section.
[FR Doc. 91-16369 Filed 7-9-91; 8:45 am]
BILLING CODE 4310-40-M

[UT-020-00-4212-13; U-68253]

Salt Lake District, Utah; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action. Exchange of lands in Tooele and Summit Counties, Utah.

SUMMARY: The following described public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

Description	Acres
T. 2S., R. 3E., SLM:	
Sec. 10: NE¼	160.00
Sec. 13: NE¼NW¼	40.00
T. 8S., R. 4W. SLM:	
Sec. 17, All	640.00
Sec. 18, All	636.56
Sec. 19, All	636.32
Sec. 20, All	640.00
Sec. 21, All	640.00
Sec. 22, All	640.00
Sec. 25, W½	320.00
Sec. 26, All	640.00
Sec. 27, All	640.00
Sec. 28, All	640.00
Sec. 29, All	640.00
Sec. 31, All	638.80
Sec. 33, All	640.00
Sec. 34, N½	320.00
Sec. 35, All	640.00
T. 9S., R. 4W., SLM:	
Sec. 3, All	636.56
Sec. 4, All	635.60
Sec. 5, All	639.12
Sec. 6, All	640.81
Sec. 7, Lot 1, N½NE¼, NE¼NW¼	160.33
Sec. 8, N½, NE¼SW¼, N½SE¼	440.00
Sec. 9, N½	320.00
Sec. 10, N½, N½SE¼	400.00
Sec. 15, NW¼SW¼	40.00
Sec. 21, E½E½, SE¼NW¼, N½ SW¼	280.00
T. 8S., R. 5W., SLM:	
Sec. 25, All	640.00
Sec. 26, All	640.00
Sec. 27, All	640.00
Sec. 28, E½, S½NW¼, N½SW¼, SE¼SW¼	520.00
Sec. 33, All	640.00
Sec. 35, All	640.00
T. 8S., R. 6W., SLM:	
Sec. 31, Lots 5, 6, 7, NE¼SW¼, NW¼SE¼	202.37
T. 9S., R. 7W., SLM:	
Sec. 1, Lots 1-4, S½N½	328.14
Sec. 2, Lots 1-4, S½N½	322.60
Sec. 3, Lots 1,5	75.25
Total acres	17792.40

Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice will segregate the public lands as described above from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws.

Information on the exchange is available from the District Manager, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,
Salt Lake District Manager.
[FR Doc. 91-16340 Filed 7-9-91; 8:45 am]
BILLING CODE 4310-DQ-M

[Prineville District, OR-050-4333-10; GP1-271]

Oregon; Draft Lower Deschutes River Management Plan/Environmental Impact Statement; Public Hearings

June 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of revised hearings schedule and comment period for the Draft Lower Deschutes River Management Plan/Environmental Impact Statement (EIS).

SUMMARY: Pursuant to 43 CFR 1610.3 and 1610.4-5, the Department of the Interior, Bureau of Land Management, Prineville District Office, in cooperation with nine other managing agencies and the Deschutes River Management Committee, has revised the hearing schedule and public comment period for the Draft Lower Deschutes River Management Plan/EIS.

SUPPLEMENTARY INFORMATION: This notice supersedes the notice which appeared on Thursday, May 9, 1991.

The draft plan and EIS will be available for public review until October 15, 1991.

Copies of the Draft Lower Deschutes River Management Plan/EIS have been sent to the BLM and State Parks mailing list. Copies are also available at: BLM, Prineville District Office, 185 E. Fourth Street, Prineville, OR 97754 or Oregon State Parks Office, 525 Trade Street SE., Salem, OR 97310.

The public is invited to submit written comments on the preferred and other alternatives as well as the analysis of impacts contained in the document. Comments should be mailed to the Deschutes River Policy Group c/o Oregon State Parks and Recreation Department, 525 Trade Street SE., Salem, OR 97310.

The revised public hearing schedule is as follows:

Bend

Tuesday, July 23, Riverhouse Motor Inn, 3075 N. Highway 97, Bend

Eugene

Wednesday, July 24, 1991, Harris Hall, 125 E. 8th, (corner of 8th & Oak), Eugene

Medford

Thursday, July 25, 1991, Windmill Inn, 1950 Biddle Road, Medford

Portland

Tuesday, July 30, 1991, Hearings Room, Portland Building, 1120 SW. Fifth, Portland

Warm Springs

Wednesday, July 31, 1991, Gymnasium, Warm Springs Elementary School, Warm Springs

Maupin

Thursday, August 1, 1991, Cafeteria, Maupin High School, Maupin

Pendleton

Monday, September 9, 1991, Vert Little Theater, Vert Memorial Building, SW. 4th & Dorion, Pendleton

The Dalles

Tuesday, September 10, 1991, The Dalles High School Auditorium, 220 E. 10th, The Dalles

Madras

Wednesday, September 11, 1991, Maccie Conroy Building, Jefferson County Fairgrounds, 458 SW. Fairgrounds Road, Madras

Salem

Thursday, September 12, 1991, Auditorium, Employment Division, 875 Union Street NE, Salem

FOR FURTHER INFORMATION CONTACT: Brian Cunninghame, BLM, Prineville District, 185 E. Fourth Street, Prineville, Oregon 97754 (Telephone (503) 447-4115).

DATES: Comments must be received by October 15, 1991.

James L. Hancock,

District Manager.

[FR Doc. 91-16367 Filed 7-9-91; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Delaware Water Gap National Recreation Area New Jersey and Pennsylvania; Revision of Park Boundaries

AGENCY: National Park Service, Interior.

ACTION: Notice of revision of park boundaries.

SUMMARY: With this notice, the National Park Service is notifying the public of adjustments to the boundaries of the Delaware Water Gap National Recreation Area to include certain lands within the boundaries of the Recreation Area.

ADDRESSES: The maps depicting these lands may be obtained from the Superintendent of Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania, 18324; or from the Land Resources Division, National Park Service, Mid-Atlantic Region, 143 South Third Street, Philadelphia.

FOR FURTHER INFORMATION CONTACT: Superintendent Richard G. Ring, Delaware Water Gap National Recreation Area, telephone 717-588-2435.

SUPPLEMENTARY INFORMATION: Section 3(b) of Public Law 89-158 of the 89th Congress enacted September 1, 1965 (79 Stat. 612), as amended, authorized adjustments of the boundaries of the Delaware Water Gap National Recreation Area by publication of the amended description thereof in the Federal Register.

These boundaries are specified in section 2(a) of the Act as "lands and interests therein within the boundaries of the area, as generally depicted on the drawing entitled 'Proposed Tocks Island National Recreation Area' dated and numbered September 1962, NRA-TI-7100."

In a subsequent Notice of Establishment published in the Federal Register, Vol. 42, No. 109, Tuesday, June 7, 1977, the Secretary of the Interior gave notice of the establishment of the Recreation Area. In this notice, he stated that "adjustment may be subsequently made in the boundaries of the area by publication of the amendments to the boundary description thereof in the Federal Register" as provided in the authorizing act.

Notice is hereby given that the boundary of the Delaware Water Gap National Recreation Area has been revised pursuant to the above act, to include the following tracts:

Tract No.	Acreage
905	6.03
7255	0.38
8110	0.03
8303	150.06
8722	21.61
10627	96.54
10800-1	95.53
11510	28.22
11511	41.26
11512	79.65
11514	1.00
11515	0.59
11516	1.06
11519	1.61
11520	2.32
11521	0.18
11706	2.30
12400-1	9.61
12401	2.17
12402	0.95
12403-1	4.25
12403-2	5.51
12465	0.52
Total (23 tracts)	551.38

All of the above mentioned tracts are presently in Federal ownership and their inclusion within the boundary will allow for proper management as park lands.

The maps on which these tracts are depicted are Segments 9, 72, 81, 83, 87, 106, 108, 115, 117, and 124, Drawing Number 620/80,900.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 91-16313 Filed 7-9-91; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, July 30, 1991, at 1:30 p.m., at the Commission of Fine Arts, 5th and F Streets, NW., suite 312, Washington, DC.

The Commission was established by Public Law 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

James Ridenour, Chairman, Director, National Park Service, Washington, DC
George M. White, Architect of the Capitol, Washington, DC
Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC
Glen Urquhart, Chairman, National Capital Planning Commission, Washington DC
Honorable Sharon Pratt Dixon, Mayor of the District of Columbia, Washington, DC
Honorable Richard G. Austin, Administrator, General Services Administrator, Washington, DC
Honorable Richard B. Cheney, Secretary of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

I. Review of Preliminary Design

(a) National Peace Garden.

II. Review of Proposed Legislation

(a) S. 781, to authorize the American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

(b) S. 1195 and H.R. 132, to provide for the establishment of a memorial on Federal land within the District of Columbia to honor individuals who have served as volunteers in the Peace Corps.

(c) H.J. Res. 155, to authorize the Association for an African-American National Monument to Promote History and Culture, Inc., to establish a memorial in the District of Columbia or its environs to honor the history and culture of African Americans.

(d) H.R. 662, to direct the Secretary of the Interior to display the flag of the United States of America at the apex of the Vietnam Veterans Memorial.

(e) S. 239, to authorize a memorial to honor Dr. Martin Luther King in the District of Columbia.

(f) H.R. 1624, to provide for the establishment of a memorial on Federal land within the District of Columbia to honor members of the Armed Forces who served in World War II.

(g) H.J. Res. 271, to authorize the Go for Broke National Veterans Association to establish a memorial to Japanese-American Veterans in the District of Columbia or its environs.

Dated: July 2, 1991.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 91-16314 Filed 7-9-91; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, August 14, 1991, at the St. Bernard Parish Police Jury Conference Room, 8201 West Judge Perez Drive, Chalmette, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Land Acquisition for Barataria
—Bayou Segnette Breakthrough
—Possible New Trails—Barataria
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the Public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishig further information concerning this meeting, or who wish to submit written statements may contact Robert, Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130-2341, Telephone 504/589-3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: June 27, 1991.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 91-16315 Filed 7-9-91; 8:45 am]

BILLING CODE 4310-70-M

Civil War Sites Advisory Commission; Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 55 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on July 17, 1991 in the Main Interior Building, 18th and C Streets, NW., Washington, DC.

An exception is being made to the 15 day notice period due to the lateness of appointment of Commission members and the need to accommodate members' schedules in holding an initial organizational meeting.

The meeting will begin at 10:30 a.m. and conclude at 4 p.m.

This meeting constitutes the first meeting of the Commission and therefore will be organizational in nature. The Commission will elect its chair and then set its own agenda regarding the conduct of a two-year study which is the Congressional mandate of the Commission, as outlined in Public Law 101-628, title 12, The Civil War Sites Study Act of 1990.

Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dr. Marilyn Nickels, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-9549). Draft summary minutes of the meeting will available for public inspection about 8 weeks after the meeting, in room 6111, 1100 L Street, NW., Washington, DC.

Dated: July 5, 1991.

Herbert S. Cables, Jr.,

Deputy Director.

Jerry L. Rogers,

Associate Director, Cultural Resources.

[FR Doc. 91-16434 Filed 7-9-91; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Finding of No Significant Impact for a Determination for the Need To Supplement An Environmental Impact Statement for the Evaluation of Comprehensive Impacts From Permit-Decisions Under the Federal Program for Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement has reviewed the need to develop a supplement to Environmental Impact Statement OSM–EIS–18 and has reviewed public comments regarding re-analysis of impacts to the human environment from future permitting actions under the Federal Program for Tennessee. OSM has found that the discussion and analysis in OSM–EIS–18 is adequate for future permitting actions under the Federal Program for Tennessee.

DATES: The effective date, July 10, 1991.

ADDRESSES: The administrative record for the Environmental Assessment and Finding of No Significant Impact is maintained by Willis L. Gainer, Chief, Southern Branch, Division of Tennessee Permitting, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Willis Gainer, Chief, Southern Branch, Division of Tennessee Permitting, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, Telephone (615) 673–4348.

SUPPLEMENTARY INFORMATION:

I. Background
II. Finding

I. Background

On October 1, 1984, the Federal Program for Tennessee became effective and on March 15, 1985, Environmental Impact Statement OSM–EIS–18 was published for this program. OSM–EIS–18 presented a comprehensive analysis of the impacts on the human environment that would result from decisions by the Office of Surface Mining Reclamation and Enforcement (OSM) on permit applications submitted in accordance with the Federal Program for Tennessee. However, the analysis of impacts was for a 5-year period which restricted the life of the EIS.

A notice was published in the Federal Register on September 17, 1990 (55 FR 38171), requesting public comments on the OSM decision on whether to prepare a supplement to OSM–EIS–18 because of the 5-year time frame on impact analysis. One public comment letter was received during the comment period.

An environmental assessment (EA) has been prepared which discussed the concerns expressed in the public comment letter. Three alternatives were considered in the EA and included: No action, prepare a supplement to OSM–EIS–18, and determine that OSM–EIS–18 is adequate and continue permitting activity under it. The EA also discussed permit actions for surface coal mining operations to operate lignite coal mines in west Tennessee which are not expected to be developed in the future due to market conditions.

II. Finding

Based on the analysis in the EA, a Finding of No Significant Impact was prepared which included the findings that:

1. The analysis in OSM–EIS–18 remains valid and can be extended to future foreseeable permitting actions.

2. If a permit application is received for the west Tennessee coal fields, permitting action would be addressed in a site specific environmental impact statement.

Dated: July 3, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 91–16306 Filed 7–9–91; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31893]

Fort Smith Railroad Co.—Lease and Operation Exemption—Missouri Pacific Railroad Co.

Fort Smith Railroad Co. (FS), a noncarrier, has filed a notice of exemption to lease and operate 49.04 miles of rail line (the Paris Branch) owned by Missouri Pacific Railroad Company (MP) extending between milepost 504.03, at Fort Smith, AR, and milepost 553.42, at Paris, AR (excluding MP's connecting track to the Arkansas & Missouri Railroad between mileposts 504.29 and 504.34 at Fort Smith). The transaction will be consummated on July 7, 1991.

This transaction is related to a notice of exemption filed concurrently in Finance Docket No. 31894, Pioneer Railroad Company, Inc.—Continuance in Control Exemption—Fort Smith Railroad Co., and also involves the issuance of a small amount of exempt securities.

Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky; 1700 K Street, NW., suite 1107, Washington, DC 20006.

FS shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470. See Class Exemption—Acq. of Oper. of R. Lines Under 49 U.S.C. 10901, 4 I.C.C.2d 305 (1988).[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d), may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 3, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–16380 Filed 7–9–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Cannons Engineering Corp. et al.; Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on July 1, 1991, four proposed consent decrees in *United States* v. *Cannons Engineering Corporation, et al.*, Civil Action No. 88–1786–WF, were lodged with the United States District Court for the District of Massachusetts. The decrees resolve claims of the United States against six defendants in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at four Superfund sites. The six settling defendants are Beggs & Cobb, Corp., d/b/a Seal Tanning Co., WES, Inc., d/b/a/ Maine Coastal Services, INCO United States, Inc., Crown Roll Leaf, Inc., Gillis & Tivey, Inc., and Chemical Management, Inc. (collectively, the "Settling Defendants"). The four sites are the Cannons Engineering Superfund Site in Bridgewater, Massachusetts, the Plymouth Superfund Site in Plymouth, Massachusetts, the Gilson Road Superfund Site in Nashua, New Hampshire, and the Tinkham's Garage Superfund Site in Londonderry, New Hampshire (collectively, the "Sites").

In the proposed consent decrees, the Settling Defendants agree to pay the United States a total of approximately $1,442,000 in settlement of the United

[1] Applicant certifies that it has identified to the appropriate State Historic Preservation Office all sites and structures 50 years old and older that will be transferred as a result of this tr insaction.

States' claims for past and future response costs incurred and to be incurred by the Environmental Protection Agency at the Sites.

The proposed decrees may be examined at the offices of the United States Attorney for the District of Massachusetts, J.W. McCormack Federal Building, Post Office and Courthouse, Boston, Massachusetts 02109; and at the Region I Office of Regional Counsel, Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203, contact: Audrey Zucker, Esq. The decrees may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the decrees may be obtained in person or by mail from the Document Center. In requesting copies of the decrees, please enclose a check for $22.25 (25 cents per page reproduction cost), payable to Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decrees for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Cannons Engineering Corporation, et al.*, (DOJ Reference No. 90-11-3-105).

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-16374 Filed 7-9-91; 8:45 am]

BILLING CODE 4410-01-M

Martech USA, Inc. et al.; Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the policy of the Department of Justice at 28 CFR 50.7, notice is hereby given that on June 26, 1991, a proposed partial consent decree in *United States v. Martech USA, Inc. et al.*, was lodged with the United States District Court for the District of Alaska (A91-290 Civ.). The complaint in the action alleges violations of section 112(c) and (e) of the Clean Air Act, 42 U.S.C. 7412(c) and (e), and the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR Part 61, subpart M, by defendants Martech USA, Inc. ("Martech"), Hobbs Industries, Inc. ("Hobbs") and Chugach Electric Association, Inc. ("Chugach"). The alleged violations occurred in the course of renovation of the Knik Arm Power Plant in Anchorage, Alaska in 1989 and 1990. Hobbs was the sublessee and prospective purchaser of the facility and Chugach is the facility owner. Martech was the asbestos abatement contractor on this major renovation.

The proposed partial consent decree settles the United States' claims against defendants Hobbs and Chugach only. The proposed decree requires these two defendants to pay a civil penalty of $50,000 and imposes certain injunctive relief at any future renovation/demolition sites owned or operated by them.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Martech et al.*, DOJ #90-5-2-1-1550.

The proposed partial consent decree may be examined at the Office of the Clerk, U.S. District Court for the District of Alaska, 222 West 7th Avenue, room 261, Anchorage, Alaska 99513 and at the U.S. Environmental Protection Agency, Region 10, 120 Sixth Avenue, Seattle, Washington 98101 (contact Bonnie L. Thie, Office of Regional Counsel, (206) 553-1466). The proposed decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, N.W., Washington D.C. 20004, (202) 347-2072. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, at the above address. In requesting a copy, please enclose a check for copying costs in the amount of $4.75 (25 cents per page), payable to "Consent Decree Library." When requesting a copy, please refer to *United States v. Martech et al.*, DOJ #90-5-2-1-1550.

Richard B. Stewart,

Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91-16375 Filed 7-9-91; 8:45 am]

BILLING CODE 4410-01-M

Union Research Co., Inc., et. al.; Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 2, 1991, a proposed Consent Decree in *United States v. Union Research Co., Inc., et al.*, Civil No. 87-0355-B, was lodged with the United States District Court for the District of Maine resolving Counts II and III of the Complaint filed in this matter as to defendant IMC Magnetics, Corp. The proposed Consent Decree concerns defendant's response to an information request sent by the United States Environmental Protection Agency, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Resource Conservation and Recovery Act, as amended.

Under the terms of the Consent Decree, defendant will pay the United States $7,500 to settle the United States' claim (under Counts II and III of the Complaint), for injunctive relief and penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Union Research Co., Inc.*, D.O.J. Ref. 90-11-2-227.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, 1 Congress Street, Boston, MA. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044, (202 347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-16376 Filed 7-9-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

1991 Horizontal Well Gravel Pack Program; Notice Pursuant to the National Cooperative Research Act

Notice is hereby given that on June 17, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in a project titled the "1991 Horizontal Well Gravel Pack Program" filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objective of the research program to be performed in accordance with said project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in the 1991 Horizontal Well Gravel Pack Program, together with the nature and objectives of the research program, are given below.

The current parties to the 1991 Horizontal Well Gravel Pack Program agreement identified by this notice are:

Agip Petroleum Co., Inc., Brookhollow Central III, 2950 North Loop W., Suite 300, Houston, TX 77092.
Amoco Production Company, 4502 East 41st Street, P.O. Box 3385, Tulsa, OK 74102.
Arco Oil and Gas Company, Division of Atlantic Richfield Company, 15375 Memorial Drive, Houston, TX 77092.
Baker Sand Control, 1010 Rankin Road, P.O. Box 61486, Houston, TX 77208–1486.
BP Exploration Inc., 5151 San Felipe, P.O. Box 4587, Houston, TX 77210.
Chevron Oil Field Research Co., 1300 Beach Boulevard, La Habra, CA 90633.
Conoco, Inc., 1000 South Pine, P.O. Box 1267, Ponca City, OK 74603.
Dowell Schulumerger Incorporated, One Poydras Plaza, 639 Loyola Avenue, Suite 1850, New Orleans, LA 70112.
Marathon Oil Company, P.O. Box 269, Littleton, CO 80160–0269.
Oryx Energy Company, 18325 Waterview Parkway, Dallas, TX 75252.
OSCA Incorporated, 156 Commission Blvd., P.O. Box 80627, Lafayette, LA 70598–0627.
Otis Engineering Corp., 2601 Belt Line Road, Carrollton, TX 75006.
Petrobras America Inc., Cidade Universitaria, Qd7, Piso 20–S/1032, Rio de Janeiro, RJ Brasil 21910.
Statoil, Den norsek stats oljeselkap a.s., Fabrikkveien 7, Forus, Postboks 300, N–4001 Stavanger, Norway.
Texaco, Inc., 5901 S. Rice Avenue, Bellaire, TX 77401.
The Western Company of North America, 8701 New Trails Drive, The Woodlands, TX 77381.

The objective of the project is to collect, compile and distribute to the participants information and gravel pack data regarding procedures and methods of gravel packing horizontal oil wells using Marathon Oil Company's 100-ft., full scale, high-pressure wellbore model to study gravel packing parameters. The study will generate data useful for a cased-hole, gravel pack completion. Marathon Oil Company will conduct the work on this project. Participation in this project is open to all parties meeting the conditions of the program agreement. The project commences on January 31, 1991, and will last until all project work is completed, until the project is otherwise terminated, or until December 31, 1991, whichever occurs first. Information regarding participation in this project may be obtained from Dr. John A. Davis, Jr., Director of the Petroleum Technology Center, Marathon Oil Company, P.O. Box 269, Littleton, Colorado 80160–0269.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–16377 Filed 7–9–91; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances Application; Arenol Chemical Corp.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedules I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 14, 1991, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501) a basic class of controlled substance in schedule II.

Any manufacturer holding, or applying for, registrations as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA **Federal Register** Representative (CCR), and must be filed no later than August 9, 1991.

This procedure is to be conducted simultaneously with an independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 28, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–16285 Filed 7–9–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances, Application; Janssen; Inc.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 24, 1991, Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances, listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator,

Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA Federal Register Representative (CCR), and must be filed no later than August 9, 1991.

Dated: June 28, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-16286 Filed 7-9-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances, Application; Penick Corp.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 27, 1991, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Meperidine (pethidine) (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (CPS) (9670)	II
Phenazocine (9715)	II
Fentanyl (9801)	II
Alfentanil (9737)	II
Sufentanil (9740)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA Federal Register Representative (CCR), and must be filed no later than August 9, 1991.

Dated: June 28, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-16287 Filed 7-9-91; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances, Registration; Penick Corp.

By notice dated May 20, 1991, and published in the **Federal Register** on June 5, 1991, (56FR25698), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, Raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (CPS) (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 28, 1991.

Gene R. Haislap,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-16288 Filed 7-9-91; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; Radian Corp.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedules I or II and prior to issuing a regulation under section 1002(a) authorizing the importantion of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 18, 1991, Radian Corporation, 8501 Mo-Pac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of Dextropropoxphene, bulk (non-dosage forms) (9273) a basic class of controlled substance in schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance in schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA Federal Register Representative (CCR), and must be filed no later than August 9, 1991.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisified.

Dated: June 28, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-16289 Filed 7-9-91; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances, Application; Roberts Laboratories, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedules I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 11, 1991, Roberts Laboratories, Inc., Meridian Center III, 6 Industrial Way West, Eatontown, New Jersey 07724, by letter made application to the Drug Enforcement Administration to be registered as an importer of propiram (9649) a basic class of controlled substance in schedule I.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Officer of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, attention: DEA Federal Register Representative (CCR), and must be filed no later than August 9, 1991.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: June 28, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–16290 Filed 7–9–91; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91–63]

Earth Observing System (EOS) Engineering Review Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the Earth Observing System (EOS) Engineering Review Advisory Committee.

DATES: July 18, 1991, 9 a.m. to 4 p.m.; July 19, 1991, 9 a.m. to 4 p.m.; July 20, 1991, 9 a.m. to 2:30 p.m.; July 22, 1991, 9 a.m. to 4 p.m.; July 23, 1991, 9 a.m. to 3 p.m.; July 24, 1991, 9 a.m. to 3 p.m.; July 25, 1991, 9 a.m. to 1 p.m.; and July 26, 1991, 9 a.m. to 3 p.m.

ADDRESSES: Scripps Institution of Oceanography, Martin Johnson House (Building T–29), 8602 La Jolla Shores Drive, La Jolla, CA 92093.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Pine, Code SPS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1648).

SUPPLEMENTARY INFORMATION: The Earth Observing System (EOS) Engineering Review Advisory Committee advises the NASA Administrator on possible alternatives for the implementation of the EOS Program, including the size of spacecraft, instrument configuration, and launch requirements and sequencing. The Committee will meet to present and discuss scheduling and budget planning, launch vehicle availability and accommodations, EOS program implementation concepts, U.S. Global Change Research Program (USGCRP) plans, and EOS–B series science and implementation options. The Committee is chaired by Dr. Edward Frieman and is composed of 8 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Committee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open.

Agenda

Thursday, July 18

9 a.m.—General Committee Discussion.
10 a.m.—Presentations and Discussion of EOS Schedule and Budget Planning.
1 p.m. —Briefings on Launch Vehicle Accommodations.
4 p.m.—Adjourn.

Friday, July 19

9 a.m. —Briefings on Launch Vehicle Accommodations.
1 p.m.—Presentations and Discussion on Science and Spacecraft Issues.
4 p.m.—Adjourn.

Saturday, July 20

9 a.m.—Briefing on Spacecraft Implementation Strategies.
1 p.m.—Briefings on Observational Techniques.
2:30 p.m.—Adjourn.

Monday, July 22

9 a.m.—Briefings and Discussions on USGCRP Planning and Programs.
1:30 p.m.—Briefings and Discussion on Remotely Piloted Vehicles.
3 p.m.—Briefing on International Global Change Research Planning.
4 p.m.—Adjourn.

Tuesday, July 23

9 a.m.—Discussion of EOS–B Science Requirements.
10 a.m.—Presentation on EOS–B Instrument Options.
11 a.m.—Discussion of EOS–B Implementation Options.
1:30 p.m.—Committee Discussion.
3 p.m.—Adjourn.

Wednesday, July 24

9 a.m.—Committee Discussion.
10 a.m.—Presentations on EOS Program Implementation Options.
3 p.m.—Adjourn.

Thursday, July 25

9 a.m.—Discussion of EOS Implementation.
10 a.m.—Presentation and Discussion of EOS Data and Information System Planning.
Noon—Committee Discussion.
1 p.m.—Adjourn.

Friday, July 26

9 a.m.—Committee Discussion.
10 a.m.—Final Presentations.
1 p.m.—Future Meeting and Committee Planning.

3 p.m.—Adjourn.

Dated: July 3, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-16334 Filed 7-9-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-62]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: July 24, 1991, 8:30 a.m. to 5:30 p.m. and July 25, 1991, 8:30 a.m. to 1 p.m.

ADDRESSES: Holiday Inn, Junction U.S. 36 and Colorado 7, Estes Park, Colorado 80517.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code M-8, National Aeronautics and Space Administration, Washington, D.C. 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 12 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room (which is approximately 30 persons including committee members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open.

Agenda

July 24, 1991

8:30 a.m.—Chairman's Remarks.
9 a.m.—Space Station Freedom Status.
10:15 a.m.—Restructure User Accommodations.
11 a.m.—Life Sciences Aerospace Medicine Advisory Committee (AMAC).
1 p.m.—Assembly and Verification.
2 p.m.—Discussion.
2:15 p.m.—Space Exploration Initiative.
3:30 p.m.—Discussion.
5:30 p.m.—Adjourn.

July 25, 1991

8:30 a.m.—Committee Fact Finding Reports. Assured Crew Return Vehicle (ACRV).
9:15 a.m.—Data Management System. Committee Work Plans.
11 a.m.—Related Committee Activities. Space Station Science and Applications Advisory Subcommittee (SSSAAS). Space Systems and Technology Advisory Committee (SSTAC).
1 p.m.—Adjourn.

Dated: July 3, 1991.

John W. Gaff,

Advisory Committee Management Officer.

[FR Doc. 91-16335 Filed 7-9-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before August 26, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interest of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1-AU-89-19). Records relating to internal audits.

2. Department of the Army (N1-AU-90-19). Records relating to medical materiel.

3. Defense Logistics Agency (N1-361-91-12). Duplicative management records maintained by Primary Level Field Activity subordinate offices.

4. Department of the Agriculture, Farmers Home Administration (N1–96–91–1). Routine fiscal and accounting records.

5. Department of Commerce, Office of Personnel and Civil Rights (N1–40–90–4). Facilitative personnel records.

6. Department of Energy, Bonneville Power Administration (N1–305–91–2). Update of comprehensive records disposition schedule.

7. Department of Health and Human Services, Centers for Disease Control, Center for Infectious Diseases (N1–442–91–1). Hard copy input forms for the AIDS Surveillance Database master file (which is designated for preservation).

8. Department of the Interior, Office of Management Improvement (N1–48–91–1). Telephone call detail records.

9. Department of the Interior, U.S. Geological Survey (N1–57–89–4). Analog and digital magnetograms.

10. Department of the Interior, U.S. Geological Survey (N1–57–91–1). Aerial photographic prints and indexes used for producing published maps.

11. International Trade Administration, Office of Japan (N1–151–91–1). Trade promotion files and trade specialists files.

12. Department of Justice, Bureau of Prisons (N1–129–91–2). Subject and chronological files of the Office of Administration.

13. Department of Justice, Foreign Claims Settlement Commission (N1–299–91–1). Working papers and other facilitative documentation from several claims programs.

14. National Archives and Records Administration (N2–220–91–5). Electronic records accessioned from the Monitored Retrievable Storage Review Commission.

15. Department of the Treasury, Office of Thrift Supervision, Financial and Administrative Management (N1–483–91–3). Routine budget and manpower records.

16. Department of Veterans Affairs, Veterans Health Services and Research Administration (N1–15–91–5). Administrative and grant files for the State Home Construction Program.

Dated: July 2, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–16378 Filed 7–9–91; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 14, 1991 through June 27, 1991. The last biweekly notice was published on June 26, 1991 (56 FR 29267).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 9, 1991 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to

which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: May 17, 1991

Description of amendments request: The proposed amendments clarify the basis and applicability of Limiting Condition for Operation (LCO) 3.4.8.1 during the time the reactor vessel head is fully detensioned and also add maximum allowable heatup and cooldown rate figures to supplement the existing pressure/temperature limit figures. The proposed amendments are necessary so that normal outage activities may be conducted which require the temperature of the reactor coolant system (RCS) to be below 93° F, currently prohibited within Technical Specification Table 3.4-3, "Maximum Allowable Heatup and Cooldown Rates."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Technical Specification for low temperature overpressure protection is based on the RCS heatup and cooldown rates of Technical Specification Table 3.4-3, as well as the operability of one of the two low temperature overpressure protection shutdown cooling relief valves. Meeting both of these requirements ensures that the RCS will be protected from pressure transients which could exceed the limits of 10 CFR 50 Appendix G when one or more of the RCS cold legs are less than or equal to 214° during cooldown and 291° during heatup. Either one of the two shutdown cooling system (SCS) suction line relief valves provides relieving capacity to protect the RCS from overpressurization when the transient is limited to either (1) the start of an idle reactor coolant pump (RCP) with the secondary water temperature of the steam generator less than or equal to 100° F above the RCS cold leg temperatures or (2) the inadvertent safety injection actuation with two high pressure safety injection (HPSI) pumps injecting into a water solid RCS with full charging capacity and with letdown isolated. These events are the most limiting energy and mass addition transients, respectively, when the RCS is at low temperatures.

Clarifying the non-applicability of LCO 3.4.8.1 when the vessel head is fully

detensioned and the RCS cannot be pressurized does not affect either the probability or consequences of the limiting events. This is so, because without the concurrent pressure stress, the thermal stress associated with normal refueling evolutions cannot exceed 10 CFR 50 Appendix G limits and therefore no structural integrity issues would exist.

The addition of and reference to Figures 3.4-2c and 3.4-2d allows a graphical representation of the actual cooldown rates. As such, the figure references (in Table 3.4-3) for cooldown rates at less than 93° F and less than 108° F are necessary as the present rates at these temperatures are overly restrictive (i.e., 0° F/hr) and do not reflect Figures 3.4-2c and 3.4-2d from which the table cooldown rates were derived.

Revising the present cooldown rates (0° F/hr) by referencing the values in Figures 3.4-2c and 3.4-2d does not change the assumptions or methodologies in Generic Letter 88-11 as previously adopted in PVNGS Technical Specifications. These proposed amendments, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments, clarifying the applicability of LCO 3.4.8.1 when the reactor vessel head is fully detensioned and supplementing Technical Specification Table 3.4-3 with Figures 3.4-2c and 3.4-2d, change none of the methodologies for calculating or evaluating P-T limits. This[sic] changes do not alter the design of the facility nor the operation of the plant, as heatup and cooldown limits are unnecessary whenever the reactor vessel cannot be pressurized. No other elements are introduced by these amendments regarding accident scenarios. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The safety function of the heatup and cooldown limitations are to ensure that the RCS pressure does not exceed the corresponding normal P-T limits, assuming a concurrent pressurization due to the limiting low temperature overpressurization transients described in Standard 1. The non-applicability of these limitations during the time period the RCS cannot be pressurized, along with the addition of the supplemental information in Technical Specification Figures 3.4-2c and 3.4-2d, does not change safety limits, setpoints, or design margins at PVNGS. As such, the proposed amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530 Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, Arizona

Date of amendments request: May 28, 1991

Description of amendments request: The amendments will revise Technical Specification Surveillance Requirement 4.7.9 to alter the schedule for snubber visual inspection which will take into account the size of the snubber population. This amendment request conforms to the guidance provided by the NRC in Generic Letter (GL) 90-09, Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions, dated December 11, 1990.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The alternative visual inspection schedule was determined in GL 90-09 to maintain the same level of confidence in the snubbers ability to operate within a specified acceptance level as the existing visual inspection schedule. In addition, the action statements for inoperable snubbers remain unchanged. The alternative schedule determines the next visual inspection based upon snubber populations, rather than just the number of inoperable snubbers. As such, adopting this alternative schedule does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The snubbers ensure that the structural integrity of the reactor coolant system and other safety-related systems is maintained during and following a seismic or other event initiating dynamic loads and thus are not credible as an accident initiator. In addition, adopting the alternative visual inspection schedule provided in GL 90-09 will not affect the capability of the PVNGS snubbers to perform their intended function during normal or accident conditions. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety. As stated in GL 90-09, the alternative schedule for visual inspections maintains the same level of confidence in the snubbers ability to operate within a specified acceptance level as the existing schedule. In addition, the proposed amendments do not change any of the actions required to be taken as a result of inoperable snubbers and do not involve a change to safety limits, setpoints, or design margins. Therefore, the proposed amendments do not involve a reduction in a margin of safety at PVNGS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: June 11, 1991

Description of amendment request: The proposed amendment would revise the thermal and pressurization limit curves of Figure 3.6.1 and 3.6.2 of the technical specifications, and adds a new curve to Figure 3.6.3, to cover the operation between 10 and 32 effective full power years (EFPY). Also included are changes to associated limiting conditions for operation (LCO), surveillance and bases sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Pilgrim Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The effect of neutron radiation on reactor vessel materials has been recalculated using the latest NRC-approved guidance (Regulatory Guide 1.99, Revision 2). The resultant changes to the pressure-temperature limits contained in Specification 3.6.A will preclude brittle fracture failure of the reactor vessel.

Changes are also proposed to Section 3/4.6.A and its associates bases to reflect the new pressure-temperature curves. These changes are editorial in nature and, as such do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of Pilgrim Nuclear Power Station in accordance with the proposed

amendment will not create the possibility of a new or different kind of accident from those previously evaluated. The proposed changes are administrative because they revise existing limitations in accordance with NRC guidance, they do not involve any physical modification to the plant, and they do not introduce any new failure modes.

The changes to Section 3/4.6.A and its bases section are editorial in nature and do not create the possibility of a new or different kind of accident from those previously evaluated.

3. Operation of Pilgrim Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety. The margin of safety is increased because the new pressure-temperature limitations are more conservative (restrictive) and result from the use of a more accurate method for predicting radiation embrittlement.

The changes to Section 3/4.6.A and its bases section are editorial in nature and do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199, attorney for the licensee.

NRC Project Director: Richard H. Wessman

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: June 17, 1991

Description of amendment request: The proposed amendment allows a one-time only extension of the surveillance interval associated with Technical Specification 4.8.1.1.2.d.1 until November 21, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. A one-time extension of Technical Specification 4.8.1.1.2.d.1 vendor recommended surveillances for diesel generators 3 and 4 until November 21, 1991 will not result in a significant increase in the probability of the diesel generators failing to perform their intended safety function. The purpose of the Technical Specification 4.8.1.1.2.d.1 required surveillance is to ensure that the diesel generators are functioning properly and to inspect for any potential problems. This is accomplished via a partial tear down of the diesel generator, in accordance with plant procedure MSTDG500. This procedure takes approximately six days to complete and is accomplished in five parts. The first part consists of a review of oil and water analyses, periodic tests, and work orders, completed during the surveillance interval, to determine if there are any particular areas developing trends that may require additional investigation. Parts 2 and 3 consist of inspections and preventive measures recommended by the diesel manufacturer plus any checks that may be advised based on Part 1 investigations. Part 4 consists of system checks and maintenance engine testing of the auxiliary lube oil pump, the motor driven fuel oil pump, the motor driven jacket water pump and the engine to determine if the diesel generator is ready to be tested for operability. Finally, Part 5 is a final operability test of the diesel while running.

On March 29, 1990, Unit 2 was shutdown and Technical Specification requirements 4.8.1.1.2.d.2 through 4.8.1.1.2.d.7 were completed. In addition, CP&L performed inspections, repairs, and operability testing of diesel generators. Many of the items normally checked during performance of MST-DG500 were checked during the recent Unit 2 outage. The net effect of performing Technical Specification requirements 4.8.1.1.2.d.2 through 4.8.1.1.2.d.7 and completing other maintenance and repair activities on the diesel generators has been to increase overall diesel generator reliability and to ensure that the diesel generators are functioning properly. This increased confidence in diesel generator reliability more than offsets the effects of the proposed extension of the Technical Specification 4.8.1.1.2.d.1 diesel generator surveillance interval.

In addition, the diesel manufacturer has indicated that diesel generator reliability can be maintained by performing the tear-down inspection required in Technical Specification 4.8.1.1.2.d.1 once per 1000 hours of diesel operation. During a typical fuel cycle, a diesel generator is run far less than 1000 hours (anywhere from approximately 80 to 150 hours). These run times are well below the vendor's recommended 1000 hour diesel generator inspection frequency.

The diesel generator surveillance requirements are intended to maintain diesel generator reliability at a level which assures that adequate electrical power is available under the most limiting accident conditions within the accident analysis for the Brunswick Plant. The most limiting accident condition includes the loss of all off-site power and the assumed single failure of one diesel generator. Based on the above discussion, the proposed one-time extension of the surveillance frequency for Technical Specification 4.8.1.1.2.d.1 will not adversely affect diesel generator availability or reliability. Thus, extending the Technical Specification 4.8.1.1.2.d.1 surveillance interval until November 21, 1991 (approximately 2 months) will not involve a significant increase in the probability of a previously evaluated accident.

There are no physical changes to the diesel generators or their manner of operation nor are there any changes to the surveillance acceptance criteria as a result of the proposed amendment. Recent completion of Technical Specification requirements 4.8.1.1.2.d.2 through 4.8.1.1.2.d.7 and completion of other maintenance and repair activities on the diesel generators has ensured continued diesel generator reliability. Since diesel generator reliability is being maintained at acceptable levels, diesel generator failures beyond the already designed and analyzed for single failure are no more likely to occur during the requested extension of the Technical Specification 4.8.1.1.2.d.1 surveillance interval until November 21, 1991 (approximately 2 months). As such, the proposed amendment will not involve a significant increase in the consequences of a previously evaluated accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment only extends the surveillance interval for Technical Specification 4.8.1.1.2.d.1. There is no change to the plant or its manner of operation. Also, there are no changes to the surveillance acceptance criteria. Therefore, the proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. Extending the Technical Specification 4.8.1.1.2.d.1 surveillance interval to November 21, 1991 for diesel generators 3 and 4 will not result in a significant increase in the probability of the diesel generator failing to perform its intended safety function. There are no changes to the diesel generators or their manner of operation nor are there any changes to the surveillance acceptance criteria as a result of the proposed amendment. The diesel manufacturer has indicated that diesel generator reliability can be maintained by performing the tear-down inspection required in Technical Specification 4.8.1.1.2.d.1 once per 1000 hours of diesel operation. During a typical fuel cycle, a diesel generator is run far less than 1000 hours (anywhere from approximately 80 to 150 hours). These run times are well below the vendor's recommended 1000 hour diesel generator inspection frequency. In addition, during an outage which began on March 29, 1990, Technical Specification requirements 4.8.1.1.2.d.2 through 4.8.1.1.2.d.7 were completed. CP&L also performed inspections, repairs, and operability testing of diesel generators. Many of the items checked during performance of MST-DG500 were checked during the recent Unit 2 outage. The net effect of these actions has been to increase overall diesel generator reliability. This increased confidence in diesel generator reliability more than offsets the effects of the proposed extension (approximately 2 months) of the

Technical Specification 4.8.1.1.2.d.1 diesel generator surveillance interval until November 21, 1991. Based on this reasoning, the effects of a one-time extension of the surveillance interval would be negligible and the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis; and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Anthony J. Mendiola

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: May 22, 1991

Description of amendments request: This amendment relocates the Radiological Effluents Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP) as allowed by Generic Letter 89-01. Programmatic controls are added to the Administrative Controls section of the Technical Specifications to satisfy existing regulatory requirements for RETS. Other changes include simplifying reporting requirements, simplifying administrative controls for changes to the ODCM and PCP, adding record retention requirements for changes to the ODCM and PCP, and updating the definitions of the ODCM and PCP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

Operation of the facility in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because relocating the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) or the Process Control Program (PCP) is strictly an administrative change that does not reduce or modify any existing safety requirement or procedure; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident scenario is created and no previously evaluated accident scenario is changed by relocating procedural requirements from one controlled document to another; or

3. Involve a significant reduction in a margin of safety because no modification of any plant structure, system, component or operating procedure is associated with this administrative change so all safety margins remain unchanged.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: June 12, 1991

Description of amendments request: This Technical Specification amendment changes the specific gravity requirements for the engineered safety feature (ESF) Division III 125 volt DC batteries. The change is due to the replacement of the existing batteries with those of a different manufacturer whose nominal specific gravity requirements are different from the original batteries. The change is, therefore, necessary to maintain the batteries in their optimum condition ensuring operability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

These amendments are required as a result of the upcoming replacement of the Unit 1 and Unit 2 engineered safety feature (ESF) Division III 125 Volt DC batteries. The DC distribution system and the batteries are designed to provide control power for both normal and emergency operation of the plant equipment and to provide power for automatic operation of the protection systems during abnormal and accident conditions (UFSAR Section 8.3.2.1). The Technical Specification limits for battery specific gravity are based on the manufacturer's nominal full charge specific gravity rating for a particular battery type. The replacement batteries are of a different type and are rated with a higher nominal full charge specific gravity value than are the currently installed batteries. Increasing the Technical Specification specific gravity limits for the Division III batteries will ensure that they are maintained in a operable condition capable of meeting their design function. Batteries are not considered as initiators of accidents; therefore, there is no increase in the probability of an accident previously evaluated. New specific gravity limits will assure that the batteries function as assumed in the safety analysis; therefore, there is no increase in the consequences of an accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed amendment reflects the change in nominal full charge specific gravity rating between the currently installed battery and the replacement batteries. The proposed amendment does not bring about any changes to the facility or to the operation of the facility as described in the UFSAR. The new batteries function the same as previously design without introducing a new failure mechanism or increasing the probability of failure. The modification of the ESF Division III DC battery specific gravity requirements does not create the possibility of a new or different kind of accident than previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety because:

The bases for Technical Specification 3/4.8.2 provides the criteria for establishing the battery specific gravity limits based on the manufacturer's ratings. The limits currently provided in the Technical Specifications for the Division III batteries are non-conservative for the replacement batteries. Therefore, the Technical Specification gravity limits for the Division III batteries must be increased in order to maintain the current margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: June 13, 1991

Description of amendments request: The proposed amendments would return to Table 4.2-1 information that was previously approved and inadvertently omitted in subsequent amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident.

The proposed amendment to Table 4.2-1, "Minimum Test and Calibration Frequency for Core and Containment Cooling Systems Instrumentation, Rod Blocks and Isolations," has been previously evaluated by Commonwealth Edison and the Commission and it was determined that this change does not involve a significant increase in the probability or consequence of an accident. This proposed amendment corrects Table 4.2-1 to include that information which was previously approved, however, was inadvertently removed in a subsequent revision to the Table. As a result, this proposed amendment is an administrative change and does not involve any accident initiators.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to Table 4.2-1 has been previously evaluated by Commonwealth Edison and the Commission, and it was determined that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed amendment corrects Table 4.2-1 to include that information which was previously approved, however, was inadvertently removed in a subsequent revision to the Table. As a result, this proposed amendment is an administrative change and does not involve any new operation of the plant.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed amendment to Table 4.2-1 has been previously determined by Commonwealth Edison and the Commission not to involve a significant reduction in the margin of safety. The proposed amendment corrects the information on Table 4.2-1 to include information which was previously approved, however, inadvertently omitted in subsequent amendments to Table 4.2-1. The proposed amendment is administrative in nature and does not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 11, 1991 as supplemented May 20, 1991

Description of amendment request: The proposed TS amendments revise the value of the required control rod drop time from 3.3 seconds to 2.2 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Power Company has made the determination that this proposed amendment does not create a Significant Hazards Consideration, as defined by the criteria of 10 CFR 50.92. These criteria ensure that operation of the facility in accordance with the proposed amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no change in the probability of any accident. The plant is not being modified in any way, except that the rod drop time will be more restrictive. The speed of the control rod drop is not an initiator of any accident.

The consequences of any accident will still meet the applicable acceptance criteria, so the consequences are acceptable. The allowable rod drop time is more conservative, in that it results in a more rapid shutdown of the reactor, and produces less severe consequences for all transients and accidents involving a reactor trip. The Chapter 15 analyses which are being performed in support of the upcoming M1C8 [McGuire Unit 1, Cycle 8] reload are expected to be submitted in early June.

2) Create the possibility of a new or different kind of accident from any previously evaluated.

This TS change will not require modifications to any equipment, components, or devices in the station. There is no need to functionally revise any procedures to operate or maintain the plant other than to substitute the new acceptance criteria in the appropriate rod drop timing test procedure. As such, the plant is not being modified in any way, and since the rod drop time will be more restrictive, there is no potential for a new or different kind of accident from any previously evaluated.

3) Involve a significant reduction in a margin of safety.

The transient and accident analyses which were performed in support of [McGuire] Unit 1 Cycle 8... show that the acceptance criteria are met in all cases. Provided that the actual rod drop time is not greater than that assumed in the transient and accident analyses, the margin of safety is maintained. It should be noted that the rod drop time assumed in the analyses can be larger than the TS value and not impact the margin of safety. TS 3.1.3.4 ensures that the scram curves used in the safety analyses are validated by rod drop test results. The design drop time of 1.8 seconds remains unaffected, and the addition of the test review criteria provides additional assurance that anomalous drop behavior is investigated. The results of the analyses continue to meet the acceptance criteria of the Standard Review Plan.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 9, 1991

Description of amendment request: The proposed amendments were submitted as a result of NRC recommendations pertaining to Generic Letter 90-06 for the power-operated relief valves (PORVs) and block valves and low-temperature overpressure protection (LTOP) systems. The proposed Technical Specifications will enhance the reliability of PORVs and block valves and will provide additional low temperature overpressure protection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

The following evaluation measures aspects of this proposal against the Part 50.92(c) requirements to demonstrate that all three standards are satisfied.

First Standard

The amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

From an accident and transient mitigation standpoint, the PORVs can be utilized to perform several safety-related functions. These include mitigation of a steam generator tube rupture accident, low-temperature overpressure protection of the reactor vessel, and plant cooldown. In addition, the PORVs can be an accident initiator in the case where a failed-open PORV results in a small break loss of coolant accident (SBLOCA).

The proposed changes will increase the likelihood that the PORVs and block valves will be available for performing their safety-related functions. They will also reduce the probability of accident sequences which may result from PORV and block valve failures. For the case where the PORVs are utilized as a means of LTOP, the proposed changes (specifically, the reduced allowable outage time while in Modes 5 and 6) will ensure that both channels of overpressure protection equipment maintain a high availability in the event that they are called upon to mitigate a low-temperature overpressurization transient.

Based on the above, the proposed Technical Specifications changes will not involve a significant increase in the probability or consequences of an accident that has been previously evaluated.

Second Standard

The amendment would not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

With the exception of a failed-open PORV resulting in a SBLOCA as indicated above, the PORVs and block valves cannot initiate accident sequences. The proposed changes will not result in the PORVs and block valves being operated or utilized in a deleterious manner; therefore, the possibility of a new or different kind of accident is not created.

Third Standard

The amendment would not involve a significant reduction in a margin of safety.

Overall plant safety would be enhanced as a result of the additional restrictions placed on the PORVs and block valves (and LTOP channels when the PORVs are used for LTOP). (While it is true that the proposed changes to action statements b. and c. in LCO [Limiting Condition for Operation] 3.4.4 are actually less restrictive than the current specification, this fact does not involve a significant reduction in any safety margin and the proposed changes are consistent with the guidance provided in the generic letter.) In addition, for GI-70 and GI-94, the NRC has made the determination that there will be a substantial increase in overall protection of the public health and safety as a result of the implementation of actions recommended by Generic Letter 90-06, including the recommended Technical Specifications changes.

Based on the above and the supporting technical justification, Duke Power Company has concluded that there is no significant hazard consideration involved in this amendment request.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: March 15, 1991 as revised May 24, 1991

Description of amendment request: The amendment would remove the schedule for withdrawal of reactor pressure vessel material specimens and reference to the schedule from the Technical Specifications (TS), in accordance with Generic Letter 91-01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed change does not significantly increase the probability or consequences of an accident previously evaluated because the reactor vessel material surveillance program is not affected by this proposed change. Implementation of the proposed change will delete a license requirement that is redundant to the Code of Federal Regulations. Thus, this proposed TS is considered to be administrative in nature.

This change would not result in a significant increase in the probability or consequences of an accident previously evaluated.

b. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because implementation of this change will not alter plant configuration or modes of operation. Compliance with existing regulations will ensure continued confidence in reactor vessel material properties.

Therefore, the requested revisions will not create the possibility of a new or different accident from any previously analyzed.

c. This change would not involve significant reduction in the margin of safety.

The proposed change will not involve a significant reduction in the margin of safety because the evaluation of reactor vessel material embrittlement is not altered by this change. Table 4.4.6.3-1 will be relocated to the UFSAR where the requirements of 10 CFR Part 50, Appendix H will still apply.

Therefore, the proposed change will not involve a significant reduction in the margin of safety.

Based on the above evaluation, Entergy Operations has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 30, 1991

Description of amendment request: The proposed amendment requests deletion from the Technical Specification (TS) of several references to operation of the Reactor Recirculation System in the Non-Loop Manual (automatic) mode of flow control. This mode of operation was eliminated via a 10 CFR 50.59 evaluation and approved design change implemented during Refueling Outage 4 in 1990.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The Non-Loop Manual mode of operation has been permanently removed and it is no longer possible to operate the Reactor Recirculation System in automatic flow control. Thus, only those plant transient

safety analyses which assume manual recirculation flow control prior to and during Reactor Recirculation Flow Controller Failure events now apply. The proposed TS changes simply remove references to the use of the automatic flow control mode throughout the TS. The proposed changes in no way increase the likelihood of a Flow Controller Failure event occurring or make the results of the event analyses more severe. Continuous operation in the Loop Manual mode only may actually decrease the probability and consequences of the analyzed events. This is due to less active equipment involved in the manual mode, as well as only one recirculation loop being postulated to fail instead of two as when operating in the Non-Loop Manual mode. The changes are administrative in nature since they are only removing information and requirements that are no longer consistent with plant design.

Thus, the probability or consequences of previously analyzed accidents are not increased.

b. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

Both the Loop Manual and Non-Loop Manual modes of operation have been previously analyzed/evaluated and approved. The proposed changes make the TS consistent with current plant design, and no new operating or failure modes are created. The scope of these TS changes is strictly limited to removal of extraneous references to automatic Reactor Recirculation System flow control, which is no longer available. There are no new or different surveillance tests or actions required by the revisions. No TS requirements associated with operation of the manual flow control mode are affected, and there is no change in the degree of protection currently afforded by existing surveillances. There is also no addition, deletion, or modification of any Class 1E component or circuit involved.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from those previously analyzed.

c. The change would not involve a significant reduction in the margin of safety.

Both Loop Manual and Non-Loop Manual modes of flow control have been separately evaluated and approved. No assumptions, methods, or results of applicable safety analyses are changed. The proposed changes do not alter the margin of safety currently realized by implementation of the existing TS for operation in the Loop Manual mode of flow control. Since operation in automatic flow control is no longer possible, there are no margins of safety related to this mode of operation which must be implemented by the TS. Removal of references to the Non-Loop Manual mode only makes the TS consistent with plant design and avoids potential confusion.

These changes thus do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: May 28, 1991

Description of amendment request: The proposed amendments would revise the Turkey Point Units 3 and 4 Technical Specifications (TS) to achieve consistency throughout the TS by (a) incorporating 20 administrative clarifications including removal of outdated material related to operations prior to installation of the new two-region high-density spent fuel racks, and (b) correcting 17 typographical errors. The following TS sections would be affected: 1.0, 2.0, 3/4.1, 3/4.3, 3/4.4, 3/4.6, 3/4.7, 3/4.9, 3/4.11, 3/4.12, 5.0, 6.2, and the Bases for Sections 3.0 and 4.0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[O]peration of the facility in accordance with the proposed amendment[s] would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being proposed are administrative in nature and do not affect assumptions contained in [the] plant safety analyses, the physical design and/or operation of the plant, nor do they affect

Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature and will not lead to material procedure changes or to physical modifications to the facility. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

(3) involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in, and maintained by[,] the Technical Specifications. Therefore, the proposed changes would not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 11, 1991

Description of amendment request: The Amendment proposes to add Technical Specification 4.3.I which would require an inservice inspection program for piping to be performed as identified in Generic Letter 88-01 or in accordance with alternate measures approved by the NRC staff. The proposed wording is as given in draft NUREG-1433, Volume 1, Standard Technical Specifications Generic Electric Plants, BWR/4, January 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change will not involve a significant increase in the probability or consequence of any accident previously evaluated.

The proposed specification is a piping inspection program requirement. The objective of this program is to provide further assurance that IGSCC does not adversely affect austenitic stainless steel pipe integrity. With piping integrity maintained the probability of pipe failure and potential consequent equipment malfunction are not increased. The inspection program does not alter the evaluation of high energy line breaks or plant response to loss of coolant accidents and so accident consequences are not increased.

2. The proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

Since the inspection activity, which is a non-destructure examination, does not involve physical changes to the plant, revise operating procedures or comprise a test, accidents or malfunctions of a different type are not created.

3. A significant reduction in margin of safety is not involved.

The augmented pipe inspection program proposed as Specification 4.3.I provides additional pipe inspection requirements beyond those currently specified in the Technical Specifications. It does not delete or revise those current requirements. Therefore, no reduction in margin of safety is involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 12, 1991

Description of amendment request: Clarifies PORV setpoint ranges and provides action requirements to be satisfied when setpoint ranges are not met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed administrative and editorial revisions clarify the existing wording and where an action is proposed, section 3.1.12.2, it is in response to not meeting setpoint ranges.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment does not modify plant operation. It will continue to be operated in accordance within the limits of the existing accident analysis and margins of safety.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment does not change any existing hardware or its setpoints and thereby preserves the existing safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: February 15, 1991

Description of amendments request: The proposed amendments consist of miscellaneour administrative changes to the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The proposed changes are purely administrative and are intended to correct errors or problems in the T/Ss. Therefore, we believe these changes do not involve a significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2

Since the proposed changes are purely administrative and introduce no new operating conditions, we believe that these changes will not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

Criterion 3

For the reasons cited in Criterion 1 above, we believe that the proposed changes will not result in a significant reduction in the margin of safety.

Lastly, we note that the Commission has provided guidance concerning the determination of significant hazards by providing certain examples of amendments not likely to involve significant hazards considerations. The first example is that of a purely administrative change to the T/Ss; for example, a change to achieve consistency throughout the T/Ss, correction of an error, or change in nomenclature. We believe that the changes requested in this letter are the type specified in this example, since they are intended to correct errors and problems in the T/Ss. Therefore, we believe this change involves no significant hazards considerations as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 28, 1989

Description of amendment request: The amendment would revise Section 3.6 of the Technical Specifications to change the pressure-temperature curves to comply with Revision 2 of Regulatory Guide 1.99 and update references to the reactor vessel surveillance capsule testing program to reflect the analysis of the first vessel specimen capsule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

In reviewing this proposed request for Technical Specification change, we have reached these conclusions:

1. The proposed change will not involve any significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment would revise the Technical Specifications to conform to current NRC requirements for protection of the reactor pressure vessel from radiation induced embrittlement. The proposed Technical Specification changes result in more conservative operating limits for the reactor vessel. The new operational limits will provide increased margins of protection for the reactor vessel from non-ductile failure.

Failure of the reactor vessel is not a design basis accident: Through design conservatisms, reactor vessel failure has an extremely low probability of occurrence and is not considered in the safety analyses. The new proposed pressure-temperature operating limits will add additional conservatism making reactor vessel failure even less credible. Therefore, this change cannot increase the probability or consequences of any previously evaluated accident.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed Technical Specification changes deal exclusively with reactor vessel pressure-temperature

limitations. No other component or plant system is affected. The new pressure-temperature limit curves will be adjusted for reactor vessel fluence in a more conservative manner than the existing curves. Therefore, there is no possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment would not involve a significant reduction in the margin of safety because the changes will increase margins of safety by adjusting reactor vessel pressure-temperature limitation curves in a more conservative manner. The proposed changes conform fully to the recommendations of the NRC staff contained in Regulatory Guide 1.99, Revision 2. Therefore, the proposed changes will not reduce margins of safety, but will increase them.

The proposed amendment, having been evaluated against the requirements of 10 CFR 50.92, is determined to involve a no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 6, 1990

Description of amendment request: The amendment would revise Section 3.3 of the Technical Specifications to remove the Rod Sequence Control System (RSCS) requirements from the Technical Specifications (TSs) and reduce the Rod Worth Minimizer (RWM) low power setpoint (LPSP) to 20% of rated power. In addition, changes would be made to improve the organization, clarity and consistency of Section 3.3 with Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change will not increase the probability of an accident because the RDA [Rod Drop Accident] is dependent only on the control rod drive system and mechanisms themselves, and not on the RSCS [Rod Sequence Control System] or RWM [Rod Worth

Minimizer] systems. The changes to the TSs for these systems affect only the analysis of the RDA.

The consequences of the RDA as evaluated in the FSAR [Final Safety Analysis Report] will not be affected by this modification because an extensive probabilistic study was performed by the NRC Staff which indicated that there was not a need for the RSCS. In addition, improvements in the RDA analysis methods indicated that the peak fuel enthalpies resulting from a RDA are significantly lower than previously determined by less refined methods.

The RSCS is redundant to the RWM. As long as the RWM is operable, control rod pattern errors are prevented and the RSCS is not needed. In the event the RWM is out of service, the TSs require that control rod movement and compliance with the prescribed control rod pattern be verified by a second licensed reactor operator. This verification process is controlled procedurally to ensure high quality, independent review of control rod movement. Therefore, elimination of RSCS requirements from the TSs will not increase the consequences of an accident previously evaluated in the FSAR.

There will also be no increase in the consequences of a RDA as evaluated in the FSAR due to lowering the RWM LPSP [Low Power Setpoint] from 30% to 20%. The effects of a RDA are more severe at low power levels and are less severe as power level increases. Although the original calculations for the RDA were performed at 10% power, to ensure conservatism, the NRC required that the generic BWR TSs be written to require that the RWM operates at any power level below 20% power. However, GE continued to perform the RDA analyses at and below 10% power because these produced more conservative analytical results. Recently, more refined calculations by BNL [Brookhaven National Laboratory] have shown that even with the maximum single control rod position error, and most multiple control rod error patterns, the peak fuel rod enthalpy reached during a RDA from these control rod patterns would not exceed the NRC limit of 280 cal/gm for RDAs above 10% power, confirming the original GE analyses. Therefore, lowering our RWM LPSP from 30% to 20% will not increase the consequences of an accident previously evaluated in the FSAR.

The control rod drive scram accumulators are part of the CRD [Control Rod Drive] system and are provided to ensure adequate control rod scram under varying conditions. The scram accumulators are needed to scram the control rods when reactor vessel pressure is low. At higher reactor pressures, vessel pressure provides the primary energy to scram the control rods. If an accumulator is inoperable at normal operating pressures ([greater than] 950 psig), the associated control rod may not meet all specified scram insertion times but reactor pressure will still ensure that a scram occurs. But, because of the large number of control rods available for scram and the assumed single failure of a control rod to scram in the safety analysis, a specified amount of time (8 hours) is allowed to restore the accumulator to OPERABLE status. The 8 hours is a conservatively short period of time and is the same time allowed by the Standard Technical Specifications for inoperable accumulators. Therefore, the changes to the inoperable accumulator LCO [Limiting Condition for Operation] will not affect the probability or consequences of a previously evaluated accident.

The purpose of control rod position indication is to ensure that pre-established control rod patterns are being followed during operation. While control rod position cannot affect the probability of an accident previously evaluated, it can affect the consequences of a RDA. The new TS for control rod position indication, however, only provide more information which better enables the reactor operator to determine control rod position. If a control rod's position cannot be determined by normal or alternate means, the rod is declared inoperable and the appropriate actions must be taken. Control rod patterns must still be followed and operation of the RWM is still required below the LPSP. Therefore, the changes to the control rod position requirements cannot affect the probability or consequences of the RDA or other previously evaluated accidents.

Demonstrating that all control rods are coupled reduces the probability that a RDA will occur and therefore provides protection against violation of fuel damage criteria during reactivity initiated accidents. Continued operation with an uncoupled control rod is not desirable and, therefore, recoupling must be accomplished within two hours. This period is in accordance with the Standard Technical Specifications' allowed outage times for uncoupled control rods. Coupling still must be demonstrated by the only valid indication of coupling i.e., noting that the drive does not go to the overtravel position. The "full in" and "full out" indication was only required for operation of RSCS and does not adequately demonstrate control rod coupling. If a control rod cannot be coupled within the 2-hour period, it is declared inoperable and inserted to reduce the probability of a RDA. Therefore, the changes to the control rod coupling requirements will not affect the probability or consequences of an accident.

Although the TSs do not require that every control rod be operable, strict control over the number and distribution of inoperable rods is required to satisfy the assumptions of the safety analyses and to provide early indication of any potential generic problem in the CRD system. The organization of all inoperable rod requirements into one section better enables operators to ensure that these requirements are met. Inserting an inoperable control rod ensures that the shutdown and scram capabilities are not adversely affected. Elimination of the 5 x 5 array requirement and use of the 2 operable rod separation criteria meets the requirements of the banked position withdrawal sequence (BPWS) and therefore ensures that the control rod drop analysis remains valid. Therefore, the changes to the inoperable rod requirements will not significantly affect the probability or

consequences of a previously evaluated accident. The capability to insert the control rods ensures that the assumptions for scram reactivity in the safety analyses are not violated. The changes to the stuck control rod TSs ensure that these assumptions are met by specifically requiring that SDM [Shutdown margin] be verified and by clarifying existing requirements. Exercising control rods at least once every 24 hours after a stuck rod is detected is a valid means to identify a common mode failure in the CRD system. However, exercising rods because two or more are inoperable (but not stuck) is not technically warranted. Therefore, the requirement to exercise all withdrawn or partially withdrawn control rods at least once every 24 hours when two or more rods are inoperable has been deleted. The changes to the stuck rod requirements will not significantly increase the probability or consequences of an accident.

As stated previously, the RWM cannot cause or prevent a RDA but can only limit the consequences. Verification of the correct sequence input to the RWM assures that the RWM will control rod movement so that the drop of an in-sequence rod from the fully inserted position to the position of the control rod drive would not cause the reactor to sustain a power excursion resulting in a peak fuel enthalpy in excess of 280 cal/gm. The RNWP [reduced notch worth procedure] currently in use with the RWM is an extension of BPWS which was originally used to limit the consequences of a RDA and is still a valid rod control sequence (ref. NRC SER to Amendment 17). Therefore, use of BPWS or its equivalent RNWP cannot increase the probability or consequences of an accident previously evaluated.

The RBM [rod block monitor] provides local protection of the core i.e., the prevention of boiling transition in a local region of the core, from a single rod withdrawal error from a limiting control rod pattern. Requiring the functional test to be performed (within 24 hours of rod movement) when one RBM channel is inoperable does not affect this safety function. The RBM is demonstrated by its monthly instrument functional tests to be operable and is considered operable until proven otherwise. This is no different from other DAEC systems. If, however, one channel is inoperable, the bases of Section 3.3 clearly indicate the need to test the remaining channel for operability. Therefore, the probability or consequences of a previously evaluated accident has not significantly increased.

Monitoring for reactivity anomalies guards against large, unexpected reactivity insertions which could have the potential for damaging the reactor. During normal plant operation, reactivity anomaly monitoring is relatively straight forward. Operation at off-rated conditions, however, makes it possible to operate with rod patterns significantly different from target rod patterns. Therefore, the technical specification for reactivity anomalies has been revised to allow for an investigation of the apparent anomaly. This requirement is similar to what is required by Standard Technical Specifications. Therefore, these changes cannot significantly increase the probability or consequences of a previously evaluated accident. The various administrative changes to Section 3.3 (reorganization, renumbering, etc.) only serve to clarify and better define current requirements and do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes to the Bases of Section 3.3 only reflect the above changes to LCO and Surveillance Requirements and do not involve any increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility for an accident different from any previously evaluated because operation of the RSCS and RWM cannot cause or prevent an accident. They function to minimize the consequences of a RDA. The RDA is already evaluated in the FSAR, and the effect of the proposed changes on this analysis is discussed in item 1 above. Elimination of the RSCS and lowering the RWM setpoint will have no impact on the operation of any other systems and cannot create the possibility for an accident to occur which has not already been evaluated.

The changes to the control rod position indication and coupling requirements cannot create a new or different kind of accident; the revised TSs will only provide more detailed information to the operators. Rod position information and coupling are still required. If these requirements cannot be met, the rods must be declared inoperable and the appropriate actions taken.

The changes to the scram accumulator requirements cannot cause a new kind of accident because the accumulators only serve to minimize the consequences of previously evaluated accidents. The function and design of the accumulators and control rods has not been changed.

The changes to the TS requirements applicable to inoperable and stuck control rod requirements cannot cause a new kind of accident; the actions required by these TSs only serve to minimize the consequences of accidents previously evaluated and assure that the assumptions of the safety analyses remain valid. No changes have been made which affect the operation of the control rods or any other system important to safety.

Use of the BPWS cannot create a new of different kind of accident because BPWS (and RNWP) only serve to limit the consequences of a RDA.

The RBM Surveillance Requirement cannot create the possibility of a different accident because the RBM system acts to prevent boiling transition in the core during single rod withdrawal errors with a limiting control rod pattern. This transient has been evaluated previously and the changes to the surveillance requirement do nothing to affect this analysis. No changes are being made which can affect other systems of create a new or different kind of accident. The changes to the Reactivity Anomaly LCO and Surveillance Requirements cannot create a new and different kind of accident because no actual changes are being made to the plant and reactivity monitoring is still required at the specified intervals.

The various administrative changes to Section 3.3 (reorganization, renumbering, etc.) only serve to clarify and better define current requirements and do not create any new or different kind of accidents.

The changes to the Bases of Section 3.3 only reflect the changes to LCOs and Surveillance Requirements previously discussed and cannot create the possibility of an accident different from those previously evaluated.

3. The margin of safety will not be reduced by the elimination of RSCS. An extensive NRC study has determined that the possibility of a RDA resulting in unacceptable consequences is so low as to eliminate any need for the RSCS. The RSCS is redundant in function to the RWM; its elimination does not affect the monitoring of control rod patterns by the RWM.

The NUMAC [Nuclear Measurement and Control] RWM is a state-of-the-art system and has exhibited high reliability and availability during its operating history. If, however, the RWM is out of service below 20% power, control rod movement and compliance with prescribed control rod patterns will be verified by a second licensed operator. The procedure specifically requires that a second licensed operator verify the first operator's actions while he performs rod movements. The rod movement sequences with their respective sign-off sheets are provided for verification by the second operator of each step and rod movement made by the first operator.

The margin of safety will not be reduced by lowering the RWM LPSP from 30% to 20% because calculations performed by GE and BNL have shown that even with the maximum single control rod position error and multiple error patterns, the peak fuel rod enthalpy during a RDA from these patterns would not exceed the NRC limit (280 cal/gm) above 10% power. In summary, GE has provided technical justification for the proposed changes in Amendment 17 to GESTAR II and the NRC has reviewed and accepted the GE analysis in the SER to Amendment 17. Therefore, there is no significant reduction in the margin of safety.

The margin of safety will not be affected by the changes to the control rod operability technical specification or bases because the majority of the changes only reorganize or clarify previous requirements. The TSs still ensure that all assumptions of the safety and accident analyses are met and verified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 13, 1990

Description of amendment request: The amendment would revise Section 3.14 of the Technical Specifications to limit the amount of radioactivity that may be contained in the liquid hold-up tanks in the Low-Level Radwaste Processing and Storage Facility (LLRPSF) to 50 curies, excluding tritium and dissolved or entrained noble gases to ensure the consequences of an uncontrolled radioactive release of the tanks' contents due to a seismic event are within 10 CFR Part 20 Appendix B limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This TS change limits the amount of radioactivity that may be contained in the LLRPSF liquid hold-up tanks to reduce the potential impact of an accident resulting from failure of a tank or its associated components. The proposed TS limit provides assurance that in the event of an uncontrolled release of tank contents, the resulting concentrations would be well below the applicable limits specified in 10 CFR 20, Appendix B, Table II,

Column 2. The requested TS change does not adversely affect the probability of initiating events for such an accident. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The TS change limits the amount of radioactivity that the LLRPSF tanks may contain to provide assurance that in the event of an accident or seismic event, the limits of 10 CFR 20, Appendix B, Table II, Column 2, will not be exceeded at the nearest potable water supply in the unrestricted area. This change will not introduce any new failure modes for any plant equipment and, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The TS change will limit the amount of radioactivity that may be contained in the LLRPSF hold-up tanks to provide assurance that an uncontrolled release of the tanks' contents will not cause the limits of 10 CFR 20, Appendix B, Table II, Column 2, to be exceeded at the nearest potable water supply in an unrestricted area. Should an uncontrolled release of the tanks' contents occur, our analysis shows radioactive nuclide concentrations well below the limits of 10 CFR 20, Appendix B, Table II, Column 2. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, the proposed license amendment is judged to involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, this NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 28, 1990

Description of amendment request: The amendment would revise Section 1.0 of the Technical Specifications to remove the 3.25 limit on extending consecutive surveillance intervals.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

In reviewing this proposed request for Technical Specification change, we have reached these conclusions:

1. The proposed amendment does not involve an increase in the probability or consequences of an accident previously evaluated. The change being proposed is administrative in nature and does not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant. The DAEC Technical Specifications provide allowance for extending surveillance intervals by 25% to preclude the need for performing surveillances when plant conditions are not suitable. The removal of the 3.25 limit on extending successive surveillance intervals presents a small risk in contrast to the alternative of a forced shutdown or performance during unsuitable plant conditions. The 3.25 limit on consecutive surveillance intervals was merely an administrative limit to preclude abuse of the provision for extension. (A clarifying note is being added to the DAEC Technical Specifications to discourage repeated use of the 25% extension allowance.) Removal of the 3.25 limit will provide greater flexibility to perform surveillances under plant conditions more suitable for the surveillances.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The allowance for extending surveillance intervals by up to 25 percent previously existed. The removal of the limitation on consecutive surveillance interval extensions will alleviate an administrative burden and allow a more flexible schedule for performing surveillances under favorable plant conditions.

3. The proposed amendment does not involve a reduction in the margin of safety. Existing surveillances remain unchanged. The ability to extend surveillance intervals by as much as 25 percent previously existed. The removal of the 3.25 limit will result in a significant safety benefit by allowing postponement of surveillances within the 25% allowance when the existing 3.25 rule would have required a plant shutdown or performance of a surveillance during plant conditions which would not be conducive to performing these surveillances.

The proposed amendment, having been evaluated against the requirements of 10 CFR 50.92, is determined to involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 7, 1991

Description of amendment request: The proposed amendment would require that the operability of certain equipment be verified instead of demonstrated when a redundant component is found or made inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

1. This proposed change defines the terminology "verification of operability," and allows for the consistent application of the verification process on portions of the Standby Liquid Control System (SLC), Core and Containment Cooling Systems, Standby Gas Treatment System (SBGT), Reactor Building Closed Cooling Water System (REC), and Service Water System. The proposed change does not impact any USAR safety analysis involving these systems.

The verification process has been applied only to those redundant trains, systems, subsystems or components where the current requirements for testing under a given LCO could adversely affect system, subsystem, or component availability or reliability. Currently, if any redundant train, system, subsystem, or component of the above identified systems were determined to be inoperable, realignment of valves for testing may render the remaining subsystem or train of that system or other systems in a degraded mode for the length of the test.

The proposed change by allowing for verification to be used in-lieu-of-testing, would improve overall system availability and reliability, thus resulting in a reduction of the potential consequence of accidents previously evaluated. System availability would be improved though the reduced scope and frequency of surveillance testing during LCO conditions, much of which is now required on a daily basis. Reduced testing would also result in fewer startup transients on equipment and systems, along with less run time and equipment wear, thus reducing the probability of equipment failures.

Based on this discussion, the District has determined that this change does not involve a significant increase in the probability or consequences of accidents previously evaluated.

2. Other changes associated with this proposed change involve the renumbering of paragraphs in the Definitions section, correction of five typographical errors, and the addition of two paragraph continuation numbers. Three changes involve the removal of weekly surveillance test requirements in situations where the corresponding LCO is limited to seven days. An additional change consists of clarifying Surveillance Requirement 4.12.C.2. This change reflects the fact that not all components are required to maintain the operability of the service water system.

The above identified changes are editorial in nature and have no impact on plant hardware, plant design, or operations. These editorial changes do not modify or add any initiating parameters that would cause a significant increase in the probability or consequence of an accident previously evaluated.

B. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

1. The proposed change consists of allowing for the verification of operability as opposed to demonstrating operability through testing for the above identified systems under the applicable LCOs. The proposed change will not reduce the availability of these systems when required to mitigate accident conditions. Excessive testing of systems and components can reduce rather than increase reliability through the increased probability of equipment failure and human error. However an acceptable level of testing can be achieved through the CNS ASME Section XI Testing Program combined with the equipment surveillance requirements that will remain in the Technical Specifications. This testing will provide adequate assurance of system performance.

The proposed change revises only surveillance requirements, and associated design bases discussions, and one definition. No change alters the plant design or its transient response. Therefore, the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

2. Other changes associated with this proposed change involve the renumbering of paragraphs in the Definitions section, correction of five typographical errors, and the addition of two paragraph continuation numbers. Three changes involve the removal of weekly surveillance test requirements in situations where the corresponding LCO is limited to seven days. An additional change consists of clarifying Surveillance Requirement 4.12.C.2. This change reflects the fact that not all components are required to maintain the operability of the service water system.

The above identified changes are editorial in nature and do not involve any alteration to the plant design, setpoints, or operating parameters. Therefore, these editorial changes do not create the possibility for a new or different kind of accident from any accident previously evaluated.

C. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

1. As discussed above, the proposed change reduces the amount of testing but does not decrease equipment availability or reliability to respond to design basis events. The proposed change will not reduce the minimum equipment operability requirements during an LCO or normal operating conditions (described in the Bases sections of the Technical Specifications) for the systems identified in the evaluation to question one. The appropriate systems, subsystems, trains, and components will respond in accordance to existing evaluations to mitigate the effects of design basis accidents. Therefore the District finds that the proposed change does not create a significant reduction in the margin of safety.

2. Other changes associated with this proposed change involve the renumbering of paragraphs in the Definitions section, correction of five typographical errors, and the addition of two paragraph continuation numbers. Three changes involve the removal of weekly surveillance test requirements in situations where the corresponding LCO is limited to seven days. An additional change consists of clarifying Surveillance Requirement 4.12.C.2. This change reflects the fact that not all components are required to maintain the operability of the service water system.

The above identified changes are editorial in nature and do not involve any change to plant design, hardware, instrument setpoints, or operation. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

IV. CONCLUSION

The District has evaluated the proposed changes described in the Summary of Changes ... against the criteria given in 10 CFR 50.92(c) in accordance with the requirements of 10 CFR 50.91(a)(1). This evaluation has determined that this proposed change will not 1) involve a significant increase in the probability or consequences of an accident previously evaluated, 2) create the possibility for a new or different kind of accident from any accident previously evaluated, or 3) create a significant reduction in the margin of safety. Therefore, the reasons detailed above [sic], the District requests the NRC approval of this Proposed Change 96.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: June 10, 1991

Description of amendment request: The proposed amendment would change the Technical Specification Shutdown Margin Surveillance Requirement 4.10.1.2 such that, "Each CEA not fully inserted shall be demonstrated capable of full insertion when tripped from at least the 50% withdrawn position within 7 days prior to reducing the SHUTDOWN MARGIN to less than the limits of Specification 3.1.1.1." The current specification specifies 24 hours prior to reducing the SHUTDOWN MARGIN.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

The proposed technical specification change has been reviewed against the criteria of 10 CFR 50.92 and it has been determined not to involve a significant hazards consideration. Specifically, the proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Technical Specifications require the surveillance for the CEA drop time to be performed following reactor reassembly. During reactor operation, it is typically many months between uses of the reactor trip system that include the full insertion of the CEAs. The change in the surveillance from 24 hours to 7 days will still result in a test being performed far more frequently than would occur during normal operation. Therefore, there is not a significant change in the probability of failure for any safety system.

2. Create the possibility of a new or different kind of accident from any previously analyzed. This proposed Technical Specification change does not modify plant response such that it could be considered a new accident. There are no new credible failure modes associated with this change. The results and effects of the change are consistent with those accidents already analyzed.

3. Involve a reduction in the margin of safety. Neither the drop time nor the CEA worth is affected by the change. Therefore, there is no impact on the performance of any safety system. There is no increase in the consequences of any accident and, as such, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: June 14, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications by changing the Definition on page 1-6 for the Total Unrodded Integrated Radial Peaking Factor, and the Technical Specification Sections 3.2.3, 4.2.3.2, 4.2.3.3, 4.2.3.4, 3.2.4, 3.3.3.2 and 4.3.3.2 to remove the requirement for an explicit tilt correction in the Total Unrodded Integrated Radial Peaking Factor. This would support the revision to the software which monitors the core power distribution.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed technical specification change has been reviewed against the criteria of 10 CFR 50.92 and it has been determined not to involve a significant hazards consideration. Specifically, the proposed change does not:

1. Involve a significant increase in the probability or consequences of any accident previously analyzed. The INPAX calculation, which includes the implicit tilt calculation, is more accurate than the

INCA calculation. The use of the tilt correction on an octant calculation is an approximation to the actual value. In the past, an implicit calculation could not be done using an octant methodology. By switching to the full core INPAX code, the more appropriate implicit calculation is possible. There are no design basis accidents that are impacted by this change to the Technical Specifications. This does not affect or have any potential impact upon any of the design basis types of accidents previously analyzed. There are no failure modes affected by the change. As such, there are no design basis accidents affected by the change.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no failure modes associated with this proposed Technical Specification change. Therefore, there are no failure modes which can represent a new unanalyzed accident.

3. Involve a reduction in the margin of safety. There are minor changes to the Bases, however these do not affect the margin of safety. The proposed changes support the planned revision to the software which monitors core power distribution. The more accurate methodology is structured such that compatibility is maintained for INCA and INPAX. Therefore, there are no changes in the margin of safety as defined in the bases for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: June 13, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications to (a) change the description of the drywell vacuum breaker test to correctly describe the controls and instrumentation provided for surveillance testing, and (b) change the minimum diesel generator fuel supply from 32,500 gallons to 34,500 gallons.

The first change would reflect a modification performed as part of the approved Detailed Control Room Design Review/Human Factors Upgrade Project. Individual push button test switches, one for each drywell vacuum breaker, were removed and replaced with a selector switch and single non-return test switch serving all the drywell vacuum breakers.

The second change would reflect a revision to the licensee's analysis as to the amount of fuel required for seven days full-load operation of one diesel generator and also provides for instrument inaccuracies and other uncertainties. The revision became necessary when it was discovered that the analysis incorrectly assumed a non-conservative value of specific gravity for the fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

Change (a):

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated? The licensee has analyzed the effect of the modification and determined that the new controls are functionally similar to the replaced configuration and do not significantly increase the risk of human error. The proposed change would thus not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated? The licensee evaluated the potential effect of the modification on the possibility of a suppression pool steam bypass accident

resulting from an operator inadvertently leaving a vacuum breaker in the test position. The licensee determined that the controls change would have no significant effect.

(3) Does the proposed amendment involve a significant reduction in a margin of safety? The licensee performed an evaluation of the new switch design and concluded that no unreviewed safety questions were involved. The Technical Specifications would not be altered as to restrictions on how and when vacuum breakers may be cycled.

Change (b):

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated? An increase in the minimum fuel storage requirement provides additional assurance of diesel generator availablity and would have no effect on the probability or consequences of analyzed accidents.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated? The proposed change does not involve a modification of the facility design or any of its emergency procedures. It, therefore, introduces no new accident scenarios.

(3) Does the proposed amendment involve a significant reduction in a margin of safety? The licensee performed an evaluation of the new switch design and concluded that no unreviewed safety questions were involved. The Technical Specifications would not be altered as to restrictions on how and when vacuum breakers may be cycled.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 6, 1991

Description of amendment request: The amendment request modifies Technical Specification (TS) Section 3/4.8.1 and the associated Bases Section for Salem Unit Nos. 1 and 2. It incorporates guidance of Generic Letter 84-15 with regard to modified surveillance testing and operability requirements to improve diesel generator reliability. It also includes changes outside the scope of the Generic Letter, based on operating experience and accepted industry practice, intended to improve the TS regarding A.C. power sources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) do not involve a significant increase in the probability or consequences of an accident previously evaluated. Reducing the test frequency while in an action statement and modifying Emergency Diesel Generator (EDG) starting and loading requirements is intended to enhance diesel reliability by minimizing severe test conditions which can lead to premature failures. Using the proposed basis for determining test frequency according to individual diesel generator performance will prevent overtesting of the diesels. The changes proposed to make the Unit 1 EDG surveillance requirements identical to that of Unit 2 is a conservative change; it will provide Unit 1 with a more comprehensive testing program. The proposed changes will continue to assure availability of the diesels and should serve to enhance EDG reliability and consequently the overall safe operation of the Salem Generating Station.

(2) do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change affects testing frequency, starting and loading practices only and has no impact on the accident analysis. No new operating modes or equipment are introduced which could initiate or affect the progression of an accident.

(3) do not involve a significant reduction in a margin of safety. The changes in the testing requirements do not adversely affect the capability of the diesels to perform their required function. Rather, the purpose of the proposed changes is to increase the overall reliability of the diesels. In adopting many of the suggestions identified in GL 84-15, the requested change would implement actions which have been determined by the NRC to reduce the risk of core damage from station blackout events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhan, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 12, 1991

Description of amendment request: This amendment request incorporates into Section 4.2.1 of the Environmental Protection Plan, Appendix B of the Salem, Units 1 and 2 license, the aquatic monitoring requirements to minimize the impact of the station operation on sea turtles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. This change only extends the monitoring period to a full 24 hour day, enhances and documents monitoring and reporting activities, and educates the monitoring personnel in sea turtle identification and resuscitation procedures.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not make any physical changes to the plant or changes in parameters governing normal plant operation. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes involve increased monitoring, documentation and administrative procedures and do not degrade the existing margin of safety. Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112

West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: May 22, 1991

Description of amendment request: The amendment application consists of Proposed Technical Specification Change No. 240 to Provisional Operating License No. DPR-13. The proposed change is a request to revise Technical Specifications Sections 3.6.1, 4.3.1 and 5.2 to change the minimum pressure for containment integrity testing, change the description for the supplemental accuracy verification test for the Integrated Leak Rate Test (ILRT), update the containment design pressure, update the peak containment pressure reached in containment during a design basis accident, and revise the frequency of the ILRT to decouple it from the 10 year plant inservice inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Operation of the facility in accordance with this proposed change will not involve an increase in the probability or consequences of an accident previously evaluated.

This proposed change makes the following changes to the technical specifications:

Increases the minimum pressure for containment integrity testing from 49.4 psig to 52.0 psig (the pressure for the reduced pressure test has also been increased from 24.7 psig, which is 50% of 49.4 psig to 26.0 psig, which is 50% of 52 psig).

Revises the containment sphere design pressure from 51.0 psig to 52.7 psig.

Revises the requirement to perform every third integrated leak rate test in conjunction with the plant 10 year inservice inspection. The new requirement states that the ILRT tests must be performed during outages, but is no longer coupled to the 10-year inservice inspection.

Changes the description for the ILRT supplemental test which verifies the accuracy of the ILRT.

Containment Test Pressure

The change to increase the minimum pressure for performing ILRT and ILRT testing was required as a result of plant modifications performed during the Cycle 11 refueling outage. The plant modifications result in a higher peak pressure after a design basis accident. The containment leak testing is done to assure that the containment will retain its integrity during a design basis accident. To assure that the total leakage would be within acceptable limits during a design basis accident, the leakage tests are performed at a pressure greater than or equal to the maximum pressure generated during a design basis accident or P_a.

As a result of the plant modifications, the analyses which determine the peak pressure inside containment following a design basis accident were revised. It was determined that the peak accident pressure following a main steam line break inside containment would be 52.0 psig. This change will increase the minimum test pressure to 52.0 psig to envelope the new calculated peak value. Testing the containment at this new peak pressure does not affect the accident probability or consequences of an accident previously evaluated.

Containment Design Pressure

The revision of the containment design pressure was performed in compliance with the applicable ASME code sections. The maximum stresses in the sphere created by the combination of design pressure in the sphere and a design basis or an operating basis earthquake will not exceed the maximum stresses allowed by the ASME code. This assures that containment integrity will be maintained and that using 52.7 psig as the design pressure will not involve a significant increase in the probability or consequences of an accident previously evaluated.

ILRT Verification Test Frequency

This proposed change also revises the ILRT frequency to remove the requirement that every third ILRT in a 10 year interval be performed in conjunction with the 10 year plant inservice inspection. The ASME Code allows the 10 year plant inservice inspection to be extended due to lengthy plant outages, but does not apply to the ILRT. While retaining the 40 ± 10 month frequency, the ILRT has been decoupled from the 10 year plant inservice inspection. This change has no impact on accident probability or consequences since it ensures that an ILRT is performed on the specified frequency without any connection to the 10 year plant inservice inspection. Performance of the ILRT ensures the containment integrity is maintained and the probability or consequences of an accident are not changed by this change.

The proposed change also revises the technical specification for performing containment integrated leakrate tests (ILRT). It provides clarification for performing the ILRT supplemental test to be consistent with the Westinghouse Standard Technical Specification (STS). This change does not affect the manner in which the containment ILRT is performed. The ILRT supplemental test will continue to be performed in accordance with the guidance of ANSI/ANS 56.8-1981, Containment System Leakage Testing Requirement. The probability or consequences of an accident are not affected by this clarification.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Containment Test Pressure

The change to increase the minimum test pressure will assure that containment integrity testing is performed at or above the highest pressure which could develop following a design basis accident. This will assure that containment leakage will remain within the technical specification limits in the event of an accident. The increase in test pressure only assures that the peak pressure from the worst case design basis accident is enveloped by integrity testing. The possibility of a new or different kind of accident than previously evaluated is not created.

Containment Design Pressure

The revision of the containment design pressure from 51.0 psig to 52.7 psig assures that an adequate testing margin will be available when performing the ILRT testing. The calculations performed to revise the containment design pressure show that the allowable stresses from the ASME code are not exceeded. Therefore the possibility of a new or different type of accident than previously evaluated is not created.

ILRT Frequency

Operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident. This change revises the technical specification of the ILRT supplemental test and removes the requirement for performing the ILRT with the 10 year plant inservice inspection. It will not change the technical specification 40 ± 10 month frequency for the ILRT. Since the ILRT is a test which demonstrates containment integrity throughout plant life, it has no impact on creating accidents. Therefore, the possibility of a new or different kind of accident than any accident previously evaluated will not occur.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Containment Test Pressure

The increase in the containment test pressure assures that the ILRT and LLRT testing will envelope the peak pressure developed following a design basis accident. By testing to a pressure which will envelope the highest calculated pressure in containment possible, the margin of safety is maintained. Therefore this change does not involve a significant reduction in a margin of safety.

Containment Design Pressure

The increase in containment design pressure is verified by calculations in accordance with the ASME code. These calculations demonstrate that the maximum stresses in the steel containment sphere following a design basis accident concurrent with an earthquake will not exceed the stresses allowed by the ASME code. Although the increased design pressure does require a decrease in surplus margin, there is no decrease in actual margin. The surplus margin is the margin between the actual

stress in the containment sphere and the ASME code allowables. Therefore, this change does not involve a significant reduction in a margin of safety.

ILRT Frequency

Operation of the facility in accordance with this proposed change will not reduce a margin of safety. This change clarifies the containment ILRT supplemental test and revises the frequency requirement to remove the connection with 10 year plant inservice inspection. The ILRT will still be performed in the same manner and in accordance with the 40 ± 10 month technical specification frequency. The margin of safety for the containment is not affected. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendments request: June 17, 1991

Description of amendments request: This application for amendments is a request to revise San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, Technical Specification (TS) 3/4.7.1.2 and associated Bases to identify that the Auxiliary Feedwater System (AFW) performs a dual function in an event which requires steam generator isolation and secondary heat removal. A new section is being added to address the operation of the AFW system when the steam generators are being used for decay heat removal. Additionally, a clarification to Surveillance Requirements 4.7.1.2.1.b.1 and 4.7.1.2.1.b.2 is provided to more accurately depict the functional testing performed every refueling outage to confirm that the AFW pumps will start upon receipt of an EFAS.

Currently, Technical Specification 3/4.7.1.2 only contains operability requirements to ensure emergency feedwater flow. No operability requirements exist for the isolation function of the AFW system valves. Therefore, entry into Technical Specification 3.0.3 is required whenever the ability to isolate the AFW system from a steam generator is compromised. This amendment request will preclude such entry into TS 3.0.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequence of an accident previously evaluated?

The proposed change defines the required LCOs and action statements for the auxiliary feedwater isolation and control valves in Technical Specification 3/4.7.1.2. These changes more clearly define plant operation to be consistent with the assumptions of the accident analyses, thereby avoiding any potentially unacceptable consequences for design basis steam or feedwater line breaks. The Auxiliary Feedwater System (AFW) is credited to respond to two Engineered Safety Feature Actuation System (ESFAS) signals. The Emergency Feedwater Actuation System (EFAS) is designed to automatically initiate AFW system flow to the Steam Generator (SG) when the SG level is low resulting from a loss of main feedwater. The Main Steam Isolation System (MSIS) is designed to isolate steam and feedwater lines to mitigate the consequences of a Main Steam Line Break (MSLB) or Main Feedwater Line Break (MFLB) accident by isolating the affected SG. The auxiliary feedwater isolation and control valves, consisting of AFWIVs, AFWCVs and AFWBCVs are credited in the accident analyses in the mitigation of postulated secondary system ruptures. Although response times are defined for all these valves by Technical specification 3/4.3.2, "Engineered Safety Features Actuation System," the TS 3/4.3.2 operability, action, and surveillance requirements are defined only in terms of instrumentation and do not address actuated components.

The proposed change adds new technical specification requirements explicitly addressing operability, action, and surveillance requirements for these valves which do not currently exist within technical specifications. These new requirements constitute additional limitations or restrictions not presently included in technical specifications. New Technical Specification 3/4.7.1.2.2 merely documents AFW system operating requirements currently adhered to when the steam generators are being used for decay heat removal in mode 4. The clarification to Surveillance Requirements 4.7.1.2.1.b.1 and 4.7.1.2.1.b.2 is strictly editorial. Therefore, operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the Facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the configuration of the plant or its operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the new facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed change does not reduce the effectiveness of the auxiliary feedwater system. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 24, 1991 (TS 91-08)

Description of amendment request: The proposed amendment would relocate several cycle-specific core operating limits from the Technical Specifications (TS) for Sequoyah Nuclear Plant, Units 1 and 2, into a new document called the Core Operating Limit Report (COLR). This would be accomplished in accordance with Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications," issued October 3, 1988. A note would replace the material removed from the TS to indicate that the limits could be found in the COLR. The proposed TS amendment would also require that the COLR be submitted to the NRC within 30 days after cycle startup or upon issuance of any mid-cycle revisions. The COLR would also replace the Radial Peaking Factor Limit Report presently required by Specification 6.9.1.14.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of cycle-specific core operating limits from the SQN TSs has no influence or impact on the probability or consequences of any accident previously evaluated. Although not in the TSs [when the proposed TS change is incorporated], the core operating limits will be followed in the operation of SQN. The proposed amendment does not affect the actions to be taken when or if limits are exceeded. Each accident analysis addressed in the SQN Updated Final Safety Analysis Report will be examined with respect to changes in cycle-dependent parameters, which are obtained from the use of NRC-approved reload design methodologies. This will ensure that the transient evaluation of new reloads is bounded by previously accepted analysis. This examination, which will be performed in accordance with the requirements of 10 CFR 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Operating SQN in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously analyzed. The removal of the specific core operating limits from the TSs does not modify safety-related equipment or systems, nor does it change any safety-related setpoints used to prevent or mitigate previously analyzed accidents. The core operating limits will be defined in a separate document (COLR) from the TS and will be adhered to during plant operation. Also, the limiting condition of operation requirements remain in effect and appropriate actions will be taken if any limits are exceeded. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of cycle-specific core operating limits from the TSs. The margin of safety presently provided by current TSs remains unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC-approved reload design methodologies and appropriate actions to be taken when or if limits are violated remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to ensure that operation of the unit within the cycle-specific limits will not involve a significant reduction in a margin of safety.

Therefore, the proposed changes will only move the pertinent parameters from one document to another and do not impact the operation of SQN in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: April 22, 1991

Description of amendment request: The proposed amendment would change the Comanche Peak Steam Electric Station (CPSES) Unit 1 Technical Specifications paragraphs 6.2.3.1 and 6.2.3.4 concerning the reporting responsibilities for the CPSES Independent Safety Engineering Group. Specifically, this change would replace the organizational position/function of Vice President, Nuclear Engineering with the organizational position/function of Executive Vice President, Nuclear Engineering and Operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change involves personnel changes at the executive level and does not impact nor affect accident analysis assumptions. Therefore, these assumptions are preserved and there is no change in the probability or consequences of any previously evaluated accident.

2. The proposed change does not degrade nor negate any of the reactor protection system safety functions. No change is made to the plant that could create a new or different kind of accident from those previously evaluated.

3. The proposed change does not impact nor affect the bases and, therefore, does not reduce the margin of safety as defined by the CPSES Unit 1 Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: George F. Dick, Jr., Acting Director

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: July 1, 1988, as modified October 20, 1989

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) 3.1.D.3 and 3.1.D.4 as allowed by NRC Generic Letter 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes." The Generic Letter states that licensees may eliminate the existing requirement to shut down a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period. No corresponding shutdown requirement exists in the Surry Technical Specifications. However, TS 3.1.D.3 currently requires that a Special Report be submitted if coolant iodine activity limits are exceeded for 300 hours in a 6-month period. As discussed in the Generic Letter, the quality of nuclear fuel has been greatly improved over the past decade with the result that coolant iodine activity is normally well below the TS limit. In addition, 10 CFR 50.72(b)(1)(ii) requires the licensee to immediately notify the NRC if fuel cladding failures exceed expected values or are caused by unexpected factors. Thus, the 300-hour limit is no longer considered necessary on the basis that proper fuel management and existing reporting requirements should preclude ever approaching the limit.

In addition, because the Generic Letter also states that the reporting requirements for iodine spiking can be reduced from a short-term report (i.e., Licensee Event Report or Special Report) to an item which is included in an annual report, a portion of TS 3.1.D.3 would be eliminated with the appropriate reporting requirement being fulfilled under TS 6.6.A.3.

The information regarding fuel burnup by core region would also be deleted from TS 3.1.D.4, in accordance with the Generic Letter.

The licensee's modified submittal dated October 20, 1989, includes two additional reporting criteria (items e. and f. of proposed page TS 3.1-15b) which were inadvertently omitted in the July 1, 1988, submittal and corrects an administrative oversight on page TS 3.1-15b which occurred during the processing of an earlier amendment request. Additionally, the modified submittal revises the reporting requirement from the previously proposed Monthly Report to an Annual Report, the text of TS 6.6.A.2 and 6.6.A.3 has been shifted from page TS 6.6-4 to pages TS 6.6-2 and TS 6.6-3, and page 6.6-4 has been identified as a deleted page.

The initial application dated July 1, 1988 was noticed in the **Federal Register** on February 22, 1989 (54 FR 7646). Due to the changes noted, the staff has determined that a renotice should be issued.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazard consideration because operation of Surry Units 1 and 2 in accordance with these changes would not:

(1) involve a significant increase in the probability or consequence of an accident previously evaluated. The changes involve administrative changes specified in Generic Letter 85-19. The deletion of the requirement to submit a Special Report if the coolant activity limit is exceeded for more than 300 hours in any 6 month period is not considered necessary because of the increased quality of nuclear fuel production and management and the requirement of 10 CFR 50.72(b)(1)(ii) for immediate notification if fuel clad failures exceed expected values should preclude approaching the limit.

(2) create the possibility of a new or different kind of accident from any accident previously identified. The changes involve administrative changes specified in Generic Letter 85-19. The deletion of the requirement to submit a Special Report if the coolant activity limit is exceeded for more than 300 hours in any 6 month period is not considered necessary because of the increased quality of nuclear fuel production and management and the requirement of 10 CFR 50.72(b)(l)(ii) for immediate notification if fuel clad failures exceed expected values should preclude approaching the limit.

(3) involve a significant reduction in a margin of safety. The changes involve administrative changes specified in Generic Letter 85-19. The deletion of the requirement to submit a Special Report if the coolant activity limit is exceeded for more than 300 hours in any 6 month period is not considered necessary because of the increased quality of nuclear fuel production and management and the requirement of 10 CFR 50.72(b)(1)(ii) for immediate notification if fuel clad failures exceed expected values should preclude approaching the limit.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: September 22, 1989

Description of amendments request: Technical Specification 15.3.7, "Auxiliary Electrical Systems," would be revised by adding conditions specifying when the 480 volt safeguards buses may be tied together, when the 4160 volt safeguards buses may be tied together, and when these buses must be powered from their normal supply. The corresponding bases section is revised to address these new provisions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed change constitutes an additional control not presently included in the technical specifications. This control limits the vulnerability of safeguards systems to multiple failures resulting from the loss of a single power system.

The proposed amendment would not involve an increase in the probability or consequences of a previously evaluated accident. The amendment is not based on any physical modification to any component of the plant. No change in operation of the plant or of any system is proposed or permitted by the proposed amendment. With no such change being made, the amendment has no effect on the probability or consequences of an accident previously evaluated.

The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no physical change to the facility or change to the operation of the facility is proposed, there is no basis for postulating a new or different kind of accident. The amendment adds a control not presently in the technical specifications. The new control reduces the potential for a loss of power to safeguards equipment while the reactors are at power. The addition of this control serves to reduce rather than increase the spectrum of conceivable accidents.

The proposed amendment does not involve a significant reduction in a margin of safety. The addition of the constraint on the use of the tie breakers controls the duration of vulnerability to a failure of an emergency power supply while the units are at power. This should increase rather than decrease a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: December 7, 1989

Description of amendments request: The licensee has proposed amending Technical Specification 15.3.3, "Emergency Core Cooling System, Auxiliary Cooling Systems, Air Recirculation Fan Coolers, and Containment Spray," by deleting the additional testing of redundant components now required whenever one component is out of service. The existing technical specification requires that a test of certain components be performed to demonstrate operability before a component to which they are

redundant is taken out of service for repair (or maintenance or surveillance). The components covered by similar requirements are: the two safety injection pumps; residual heat removal pumps; valves in the safety injection systems and the residual heat removal systems; accident fan coolers; containment spray pumps; and valves in the containment spray system. The corresponding basis section is to be revised to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The amendment would not authorize any change in systems or components nor would it authorize any change in plant operating procedures. The amendment would be limited to a relaxation of certain surveillance procedures. Since there is no proposed change to equipment or to operating procedures, there is no change to the probability or consequences of accidents previously evaluated.

The amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no change to equipment or to plant operating procedures.

These changes do not involve a significant reduction in margin of safety. Relaxing the surveillance requirement does potentially reduce the margin of safety. The critical determination is whether this reduction is significant. The licensee states that equipment reliability is not significantly reduced by eliminating the additional testing. They also state the converse that more frequent testing than that required in the technical specifications under normal conditions does not significantly increase equipment reliability. The licensee further notes that when testing is performed on the redundant components, these redundant components, too, are rendered inoperable during the testing. This testing can create situations where both systems are out of service. Therefore, there are benefits as well as detriments to the relaxation of the testing requirements. The licensee has determined that the reduction in the margin of safety is not significant.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of amendment request: June 14, 1991

Brief description of amendment request: The amendment would change Sections 3.3.B.1 and 4.3.B.1 of the Peach Bottom Unit 3 Technical Specifications to allow operation with control rod 38-23 not coupled to its drive for the remainder of cycle 8, which is to be completed before October 30, 1991. During the repositioning of this rod, which is presently fully inserted and electrically disarmed, it would modify the surveillance requirements to require rod position verification by use of neutron instrumentation. Date of publication of individual notice in **Federal Register:** June 25, 1991 (56 FR 28935)

Expiration date of individual notice: Comment period expired July 10, 1991; Notice period expires July 25, 1991.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: February 6, 1991

Brief description of amendment: This amendment establishes a revised basis for the safety analysis of the Pilgrim Nuclear Power Station based upon the results of the loss-of-coolant accident (LOCA) analysis performed using General Electric SAFER/GESTRA-LOCA Application Methodology.

Date of issuance: June 19, 1991

Effective date: June 19, 1991

Amendment No.: 137

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9375) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: December 19, 1990

Brief description of amendments: The amendments revise the Braidwood Station, Unit 2 Specifications by changing the heatup and cooldown curves, the power operated relief valve Low Temperature Overpressure Protection (LTOP) setpoints and their bases. These amendments also shorten the applicability of the Braidwood, Unit 1 heatup and cooldown curves.

Date of issuance: June 27, 1991

Effective date: June 27, 1991

Amendment Nos: 30 and 30

Facility Operating License Nos. NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (54 FR 11774) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington Illinois 60481.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: November 27, 1990, as supplemented March 22, 1991

Brief description of amendment: The amendment will add valve "NG-V-473," for Cycles 16 and 17 only, to and delete valve "CC-V-884" from Note 2 in Technical Specification (TS) 1.6.a.2, "Definitions - Containment Integrity." Note 2 allows for normally-closed manual containment isolation valves to be opened for periodic surveillance and containment boundary (vent and drain) manual valves to be opened for diagnostic checks to ensure TS limits or to ensure system operability is maintained. Date of Issuance: June 19, 1991

Effective date: June 19, 1991

Amendment No.: 138

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15638) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 21, 1988, as supplemented July 18 and September 28, 1990

Brief description of amendment: The amendment revises the Technical Specifications (TS) to remove the organization charts following the guidance provided in the Commission's Generic Letter 88-06. The proposed amendment would also make various administrative changes to Section 6.0 of the TS.

Date of issuance: May 31, 1991

Effective date: May 31, 1991

Amendment No.: 139

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 15, 1989 (54 FR 47601) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 2, 1991

Brief description of amendments: The amendments change the visual inspection requirements for snubbers in response to the guidance provided in the NRC's Generic Letter 90-09 "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of issuance: June 18, 1991

Effective date: June 18, 1991

Amendment Nos.: 88, 82

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20033) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: June 7, 1990, as supplemented October 4, 1990, and April 30, 1991.

Brief description of amendments: The amendments revise Technical Specification 3/4.6.5.1, "Ice Condenser Containment Systems," to reduce the ice weight required to be maintained in the ice condenser ice baskets. Specifically, the total minimum ice weight is reduced from 2,466,420 pounds to 2,099,790 pounds, and the minimum weight for each basket is reduced from 1269 pounds to 1081 pounds.

Date of issuance: June 12, 1991

Effective date: June 12, 1991

Amendment Nos.: 120 and 102

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32326) The licensee's October 4, 1990, and April 30, 1991, submittals provided supplemental information which did not affect the scope of the initial notice or the Commission's proposed significant hazards consideration analysis. The

Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: April 18, 1991

Brief description of amendments: The amendments replaced the title "Director, Operations" in each unit's Section 6.0, "Administrative Controls" with the title "General Manager, Plant Operations". The amendments also revise Technical Specification Sections 6.8.2 and 6.8.3 to replace "General Manager" with "Major Department Head".

Date of issuance: June 19, 1991

Effective date: 30 days from date of issuance

Amendment Nos.: 147 and 119

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22465) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: September 20, 1990

Brief description of amendments: The amendments provide an additional restriction to the Technical Specifications for starting a reactor coolant pump in a Mode 4 water-solid condition.

Date of issuance: June 13, 1991

Effective date: June 13, 1991

Amendment Nos.: 39 and 19

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20036) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: September 15, 1989

Brief description of amendments: The amendments modified the Engineered Safeguards Features and Storage Pool Ventilation System TS (3/4.7.6.1 and 3/4.9.12, respectively) such that the temperature at which laboratory testing of charcoal samples is conducted is conservatively decreased from 130° C to 30° C. They also delineated ASTM D3803-1979 as the test standard for conduct of these tests.

Date of issuance: June 6, 1991

Effective date: June 6, 1991

Amendments Nos.: 156/140 Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1990 (55 FR 14509). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: July 5, 1990, as supplemented on July 30, 1990, January 30, 1991 and April 4, 1991.

Brief description of amendment: This amendment modifies Technical Specifications 5.2.2.h and 5.3.1.d. The former requires either the Manager of Operations, or the Assistant Manager of Operations, to hold a Senior Operator's license at Maine Yankee; the latter establishes the license requirement for the Assistant Manager of Operations.

Date of issuance: June 17, 1991

Effective date: June 17, 1991

Amendment No.: 122

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34373). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: February 26, 1991

Brief description of amendments: The amendments revise Technical Specifications (TS) section 3.4.A to incorporate an action statement for the inoperability of one steam generator power operated relief valve. The action statement was unintentionally deleted from section 3.4 during a previous TS revision.

Date of issuance: June 26, 1991

Effective date: June 26, 1991

Amendment Nos.: 97 and 90

Facility Operating License Nos. DPR 42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11783). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 1, 1991

Brief description of amendments: The amendments correct the inconsistencies between Technical Specification Sections 3/4.8.2 and 3/4.8.3. It also addresses the loss of both divisions of 24 volt DC batteries. This change makes editorial corrections such as correcting numbering of equipment, adding missing "equal to" signs, reordering action statements for clarity and correcting "typos".

Date of issuance: June 19, 1991

Effective date: June 19, 1991

Amendment Nos.: 110 and 79

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13668) The

Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 2, 1990

Brief description of amendments: The amendments changed Technical Specification 6.4 for both Units 1 and 2. The phrase "and Appendix 'A' of 10 CFR Part 55 and the supplmental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter to all licensees, and shall include familiarization with relevant industry operational experience" was deleted. Instead, the phrase "except that the licensed operator intial training and requalification programs shall meet or exceed the requirements of 10 CFR Part 55 and utilize the guidance contained in Regulatory Guide 1.8, Rev. 2" was added.

Date of issuance: June 26, 1991

Effective date: 30 days after its date of issuance.

Amendment Nos.: 111 and 80

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 12, 1990 (55 FR 51182) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 27, 1990

Brief description of amendments: The amendments changed the Technical Specifications by requiring that the LOCA/False LOCA interlocks be tested every 18 months and by incorporating language which allows the tests to be successfully completed by an series of sequential, overlapping or total channel steps such that the entire channel is tested.

Date of issuance: June 27, 1991

Effective date: As of the date of issuance and shall be implemented within 30 days of the date of issuance.

Amendment Nos.: 112 and 81

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Decenber 12, 1990 (55 FR 51182) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: April 30, 1991

Brief description of amendments: The amendments revised Section 4.74 and the associated Bases of the Technical Specifications to incorporate the recommendations on snubber visual inspection frequencies contained in NRC Generic Letter 90-09.

Date of issuance: June 25, 1991

Effective date: June 25, 1991

Amendment Nos. 51 and 15

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22472) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 25, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 30, 1990 and as supplemented by letter dated April 9, 1991. The supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

Brief description of amendments: These amendments changed the Technical Specifications to revise the testing requirements for core and containment cooling systems when one system becomes inoperable, to revise the operability requirements of the high pressure core cooling systems, and to incorporate some administrative changes.

Date of issuance: June 12, 1991

Effective date: June 12, 1991

Amendments Nos.: 160 and 162

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53074) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 31, 1990

Brief description of amendments: The amendments revised the Technical Specifications to require Augmented Inservice Inspections of piping be performed in accordance with the staff positions in NRC Generic Letter 88-01.

Date of issuance: June 18, 1991

Effective date: June 18, 1991

Amendments Nos.: 161 and 163

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22475) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and

Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 13, 1991

Brief description of amendments: These amendments modified the technical specifications to redefine the applicable ACTIONs to be taken on the basis of inoperable containment fan cooler "units" instead of inoperable "groups" of containment fan coolers.

Date of issuance: June 13, 1991

Effective date: For both units, as of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment Nos. 126 and 105

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11786) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 4, 1991

Brief description of amendment: The proposed amendment changes the Technical Specifications to revise Figure 3.1-3, "Required Shutdown Margin (Modes 3, 4 and 5)," to incorporate the more negative boron worths associated with the Cycle 6 core and subsequent cores. In addition, an administrative change was included in the change request to revise Basis 3/4.2-1, "Axial Flux Difference," to refer to the Core Operating Limits Report rather than the Peaking Factor Limits Report.

Date of issuance: June 19, 1991

Effective date: June 19, 1991

Amendment No.: 100

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9386) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: December 18, 1990

Brief description of amendment: The amendment changes the Technical Specifications to increase surveillance test intervals and allowed outage times for the reactor trip system and the engineered safety features actuation system instrumentation.

Date of issuance: June 18, 1991

Effective date: June 18, 1991

Amendment No.: 101

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1991 (56 FR 2555) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: May 2, 1991

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.7.6 and associated Bases, "Snubbers," in accordance with Generic Letter 90-09, "Alternative Requirements For Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990. Specifically, TS 4.7.6.b, "Visual Inspections," and TS 4.7.6.c, "Visual Inspection Acceptance Criteria," are revised to remove the existing snubber visual examination schedule and replace it with a refueling outage based visual examination schedule as delineated in Generic Letter 90-09 (TS line item improvement).

Date of issuance: June 17, 1991

Effective date: June 17, 1991

Amendment Nos.: Unit 2: No. 95; Unit 3: No. 85

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22477) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1991 (56 FR 22477)

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 29, 1990, as supplemented May 8, August 8, and October 30, 1990.

Brief description of amendments: The amendments modify TS having cycle-specific parameters limits by replacing the value of those limits with a reference to a Core Operating Limits Report (COLR). Inclusion of the licensee's boron concentration in the COLR is unacceptable at this time and a Notice of Denial will be published separately.

Date of issuance: June 7, 1991

Effective date: June 7, 1991

Amendment Nos.: 146, 130

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 2, 1990 (55 FR 18416) The May 8, August 8, and October 30, 1990 letters provided revised Technical Specification pages to correct editorial errors and minor changes in format. These letters did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland, this 2 day of July 1991.

For the Nuclear Regulatory Commission

Bruce A. Boger,

Director, Division of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation

[Doc. 91-16243 Filed 7-9-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-219]

GPU Nuclear Corporation and Jersey Central Power & Light Co.; Issuance of Facility Operating License No. DPR-16

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR-16 to GPU Nuclear Corporation and Jersey Central Power & Light Company authorizing operation of the Oyster Creek Nuclear Generating Station to steady-state reactor core power levels not in excess of 1930 megawatts (thermal), in accordance with the provisions of the license and the Technical Specifications.

Oyster Creek is a boiling-water reactor located in Ocean County, New Jersey. The Oyster Creek reactor has operated since April 9, 1969, under Provisional Operating License No. DPR-16. Facility Operating License No. DPR-16 supersedes Provisional Operating License No. DPR-16 in its entirety.

Notice of Consideration of Conversion of Provisional Operating License to Full-Term Operating License and Opportunity for Hearing was published in the **Federal Register** on November 28, 1972 (37 FR 25190). The full-term operating license was not issued previously pending completion of the reviews under the Systematic Evaluation Program (NUREG-0822, January 1983, and Supplement 1 thereto, July 1988), and by the Advisory Committee on Reactor Safeguards. The Final Environmental Statement (FES) related to the conversion to a full-term operating license was issued in December 1974. A Notice of Availability of the FES was published in the **Federal Register** on December 24, 1974 (39 FR 44482). Because the FES was issued a number of years ago, the staff performed an environmental assessment to determine if an FES supplement was necessary. This assessment, dated April 10, 1986, concluded that an FES supplement was not necessary. This conclusion was noticed in the **Federal Register** on April 15, 1986 (51 FR 12754).

The application for the full-term operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR chapter I, as set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Facility Operating License No. DPR-16 is effective as of its date of issuance and shall expire at midnight on December 15, 2004.

For further information concerning this action see (1) the licensee's application for a full-term operating license dated March 6, 1972, (2) the Final Environmental Statement (December 1974), (3) the Commission's Environmental Assessment dated April 10, 1974), (3) the Commission's Environmental Assessment dated April 10, 1986, as supplemented June 19, 1991, (4) Facility Operating License No. DPR-16, and (5) the Safety Evaluation Report (NUREG-1382) dated January 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

A copy of Facility Operating License No. DPR-16 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II. Copies of the Safety Evaluation Report (NUREG-1382) may be purchased through the U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5585 Port Royal Road, room 303, Springfield, Virginia 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated At Rockville, Maryland, this 2nd day of July 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-16409 Filed 7-9-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-10749-CivP; ASLBP No. 91-649-04-CivP]

Midwest Inspection Service, LTD., Byproduct Materials License No. 48-16296-01; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a Presiding Officer is designated in the following proceeding:

Midwest Inspection Service, Ltd.

Byproduct Materials License No. 48-16296-01 EA 90-152

The Presiding Officer has been designated pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Director, Office of Enforcement, dated May 9, 1991, entitled "Order Imposing Civil Monetary Penalty" (56 FR 22894, May 17, 1991).

The Presiding Officer in this proceeding is The Honorable Ivan W. Smith, Administrative Law Judge.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed with Judge Smith in accordance with 10 CFR 2.701. His address is: Administrative Law Judge Ivan W. Smith, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 3rd day of July 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-16424 Filed 7-9-91; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Statement of Policy on Offering Portfolios of Assets for Sale

AGENCY: Resolution Trust Corporation.

ACTION: Notice of adoption.

SUMMARY: This policy enables RTC to negotiate sales of $100 million or more of hard-to-sell assets under either of the following conditions: (1) The specific asset pool, or criteria for identifying an asset pool, has been advertised and proposals have been widely solicited; (2) the present value sales price exceeds the sum of the minimum acceptable sale prices for the individual assets.

DATES: This policy statement is effective May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Amy Hersh, REO Marketing Specialist, RTC (202) 416-4208, or Robert Montagne, REO Marketing Specialist, RTC (202) 416-4255.

Policy Statement

The RTC may solicit, evaluate and negotiate purchase offers for portfolio sales of qualified assets. The assets to be included in these portfolios may be

identified in advance, or selected after contract negotiation in accordance with criteria approved by the RTC. RTC financing may be offered to qualified purchasers of these portfolios, and such financing may include performance-based cash flow obligations, in addition to financing that is in conformance with RTC's seller financing guidelines.

Subject to applicable policy, all aspects of such contracts may be negotiated if the portfolios were exposed to the broadest practicable market by such means as advertisement in appropriate medium. Promotional materials should include either a list of the specific assets to be included or a description of the criteria to be used in selecting the assets.

Alternatively, contract offers may be negotiated for portfolios of widely marketed assets sold at prices that maximize net present value returns to the RTC and that are, in aggregate, consistent with appropriate RTC sales policy for individual assets. The net present value returns to the RTC for any one or more assets may be less than the relevant acceptable sales prices for those specific assets as long as the net present value returns from the portfolio as a whole is expected to exceed the sum of the relevant minimum acceptable sales prices for all of the assets in the portfolio.

Definition of Terms

For purposes of this policy statement, the following terms will have the meanings given below:

Qualified Assets—REO, non-securitizable loans, and other packages of illiquid assets.

Portfolio Sales—Sales of large volumes (generally $100 million or more) of assets to one buyer.

Qualified Purchasers—Purchasers who have been evaluated by a third party contractor with respect to their financial capabilities and their experience in owning and operating the particular type of asset(s) included in the portfolio.

Performance-Based Cash Flow Obligations—Obligations secured by a first lien position for which debt service payments are determined by the availability of cash flow and the RTC participates in the operating profits and the upside appreciation upon sale or refinancing.

Selection and Negotiation

Purchase offers for these portfolios will be solicited from the widest practicable market. From the proposals received, the RTC will select the most attractive offer or offers and enter negotiations with those investor(s) in order to establish the structure which maximizes the present value results to the RTC from the sale of its assets. Such negotiations may address pricing and RTC financing, as defined above, as well as other business and legal issues.

Justification

With $160 billion of assets today, and another $100 billion or so in the pipeline, the challenge to the RTC to dispose of its assets is so daunting that a diversity of programs and formats is required to achieve success. Given the sheer volume of assets involved, major sales transactions are essential to return assets to private ownership promptly at the lowest possible cost to the taxpayer and with minimal disruption to the community. We believe that structured transactions are a way to attract the buyers with the significant capital resources needed to purchase and improve large volumes of RTC assets.

After meetings with major institutional and other sophisticated investors, it is apparent that many of the investors we most need to attract are not willing to repeatedly incur the extensive costs and time commitment involved in bidding on portfolio sales of real estate or highly illiquid loans without some reasonable prospects of success. Our current method of competitive bidding such portfolios is not suitable for a number of large buyers. For some, the competitive bid process is too unpredictable and costly and does not facilitate tailoring portfolios to individual investor needs.

In order to attract new buyers, it is imperative that the RTC be able to operate in a manner that allows investors a degree of comfort that they will be able to purchase a given portfolio before they devote considerable resources to due diligence. Additionally, the RTC enhances its ability to maximize net present value results if it allows major investors some flexibility with respect to transaction structures, so that they may propose specific terms that work to the best advantage of both the RTC and the investor.

In summary, in order to increase our sales of large blocks of assets, we must be able to negotiate offers in appropriate instances with qualified parties who have been given an opportunity to participate. The ability to negotiate large asset sales transactions in accordance with this policy is an additional cost-effective approach to selling RTC assets that we believe will produce excellent results.

With this policy statement we are therefore extending current authority for the negotiation of individual asset sales to the sale of portfolios of RTC assets, in certain instances as described above.

By order of the Board of Directors on May 21, 1991.

Dated at Washington, DC, this 2nd day of July, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-16291 Filed 7-9-91; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18221; File No. 812-7731]

IDS Life Insurance Co., et al.

July 3, 1991.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: IDS Life Insurance Company ("IDS Life") and IDS Life Account SLB (the "Variable Account").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account under certain combination fixed and variable annuity contracts.

FILING DATE: The application was filed on May 23, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on July 29, 1991 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons mayrequest notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, IDS Tower 10, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: L. Bryce Stovell, Attorney-Adviser, at (202)

504-2272, or Heidi Stam, Assistant Chief, at (202) 272-2060 Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. IDS Life is a stock life insurance company organized under the laws of Minnesota. It is a wholly owned subsidiary of IDS Financial Corporation which, in turn, is a wholly owned subsidiary of the American Express Company.

2. The Variable Account was established by IDS Life on May 9, 1991 as a separate account under Minnesota law to fund individual flexible premium deferred combination fixed and variable annuity contracts (the "Annuities"). IDS Life is the principal underwriter of the Variable Account. IDS Life proposes to issue the Annuities to provide for retirement payments and other benefits. Purchase payments under the Annuities may be accumulated before retirement on a variable basis, and annunity payments may be received after retirement on a fixed basis.

3. The Annuities provide for allocation of purchase payments to the subaccounts of the Variable Account or to a fixed account of IDS Life. The subaccounts of the Variable Account, in turn, will invest solely in the shares of one of seven corresponding portfolios of a registered investment company (the "Fund"). The Fund is a Massachusetts business trust which has registered with the Commission as a diversified open-end management investment company.

4. IDS will assess an annual contract administrative charge of $30 for the Annuities. IDS Life also will assess the subaccounts of the Variable Account of daily asset charge at an effective rate of 0.25 percent per annum for administrative expenses. These charges cannot be increased during the life of the Annuities and do not apply after retirement annuity payments begin. These charges represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Annunities.

5. IDS Life assumes an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. These include the costs and expenses of processing purchase payments, annuity payments, surrenders and transfers; furnishing confirmation notices and periodic reports; calculating mortality and expense charges; preparing voting materials and tax reports; updating the registration statements for the Annuities; and actuarial and other expenses.

6. IDS Life assumes certain mortality risks by its contractual obligation to continue to make retirement annuity payments for the entire life of the annuitant under annuinty options which involved life contingencies. They payment option tables contained in the Annuities are based on the 1983 Individual Annuity Mortality Table. These tables are guaranteed for the life of the Annuities. IDS Life assumes additional mortality and certain expense risks under the Annuities by its contractual obligation to pay a death benefit in a lump sum (or in the form of an annuity option) upon the death of an annuitant and, in some cases, another specified person, prior to the annuity date.

7. IDS Life will assess the subaccounts of the Variable Account a daily asset charge at an aggregate rate of 1.25 percent per annum to compensate IDS Life for assuming mortality and expense risks. IDS Life estimates that approximately two-thirds of this fee is for assumption of the mortality risk and one-third is for assumption of the expense risk. This charge cannot be increased during the life of the Annuities and does not apply after retirement payments begin. IDS Life expects to profit from the mortality and expense risk charge. Any profit would be available to IDS Life for any proper corporate purpose including payment of distribution expenses.

8. IDS Life states that it has reviewed publicly available information regarding products of other companies taking into consideration such factors as guaranteed minimum death benefits; guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed, market sector; investment options under contracts; and availability of individual qualified and nonqualified plans. Based upon this review, IDS Life has concluded that the mortality and expense risk charge described herein is within the range of charges determined by industry practice. Applicants also represent that the level of the mortality and expense risk charge is reasonable in relation to the risks assumed by IDS Life under the Annuities. IDS Life will maintain at its principal office, and make available on request of the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, its comparative review.

9. No sales charge is collected or deducted at the time purchase payments are applied under the Annuities. A contingent deferred sales charge ("Surrender charge") will be assessed on certain full or partial surrenders. A surrender charge applies if all or part of the contract value is surrendered during the first six payment years after a purchase payment. A payment year is each contract year in which a purchase payment is made and each succeeding year measured from the end of the contract year during which the purchase payment is made. The surrender charge starts at 6 percent of a purchase payment in the first payment year and is reduced by 1 percent each payment year thereafter so that there is no charge after six payment years. After the first contract year, Annuity owners may surrender 10 percent of their contract value (at the time of surrender) once each contract year without incurring a surrender charge. In addition, there is no charge on contract earnings, which equal: (1) The contract value; minus (2) the sum of all purchase payments received that have not been previously surrendered; minus (3) the 10 percent free withdrawal amount, if applicable. To determine the amount of any surrender charge, surrenders will be deemed to be taken first from any applicable 10 percent free withdrawal amount; next from purchase payments (on a first in-first out basis) and finally from contract earnings (in excess of any 10 percent free withdrawal amount).

10. Applicants acknowledge that the surrender charge may be insufficient to cover all distribution costs and that, if a profit is realized from the mortality and expense risk charge, all or a portion of that profit may be offset by distribution expenses not reimbursed by the surrender charge. Notwithstanding this, IDS Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the contracts will benefit the Variable Account and investors in the Annuities. The basis for such conclusion is set forth in a memorandum which will be maintained by IDS Life at its principal office and will be available to the Commission or its staff on request.

11. Applicants represent that they will amend the application during the notice period to reflect that IDS Life represents that the Variable Account will invest only in an underlying mutual fund which, in the event it should adopt any plan under Rule 12b-1 to finance distribution expenses, would have such

plan formulated and approved by a board of trustees, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-16407 Filed 7-9-91: 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29390; File No. SR-OCC-90-03]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Acceptance of Late Exercise Notices

July 1, 1991.

On March 15, 1990, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934, ("Act").[1] The proposed rule change will amend OCC's rules concerning the acceptance of late option exercise notices. Notice of the proposal appeared in the **Federal Register** on April 26, 1990.[2] No comments were received. On April 24, 1991, OCC amended the proposal. The amendment made clarifying changes to OCC's proposal as originally filed.[3] As discussed below, the Commission is approving OCC's amended proposal.

Description

The proposed rule change, among other things, will modify OCC's procedures for processing late option exercise notices on non-expiring option contracts; [4] prohibit the acceptance of requests to revoke previously tendered option exercises after the start of critical processing; [5] amend OCC's fees for processing late notices; and clarify OCC's rule 801(e) excluding foreign currency option from the late exercise provisions.

Under the proposal, OCC will accept for processing late exercise notices to correct *bona fide* errors [6] received from 7 p.m. until 6 a.m.[7] Between 6 a.m. and 8 a.m., OCC will accept late exercise notices on a "best efforts" basis.[8] OCC will not accept any late exercise notices for processing after 8 a.m. on the day of exercise.

Any late exercise notices accepted by OCC between 12:01 a.m. and 8 a.m. will be deemed by OCC to have been received prior to midnight. In effect, OCC will process all late exercise notices in OCC's evening processing cycle for settlement as if the notices were accepted on the same business day.[9]

In order for OCC to accept a late exercise notice, the exercising clearing member must request acceptance by telephone. The phone call is forwarded to OCC's Assistant Vice President or Director who records all relevant information regarding the exercise and contacts OCC's Chairman, President or, in their absence, OCC's Executive Vice President, (collectively, "Executive Management") for approval.[10] At the same time approval is sought from Executive Management, the clerk that received the telephone call initially will verify that the clearing member holds sufficient long positions.

If the exercise is accepted, the margin requirement for exercises that require supplemental processing will be calculated beginning on the afternoon of the day the exercise is accepted.[11] OCC will make every effort to notify the assigned clearing member within 30 minutes of accepting the notice and under no circumstances will OCC process a late notice if it is unable to notify the assigned clearing member by 8 a.m.[12]

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[1] 15 U.S.C. 78s(b) (1989).

[2] Securities Exchange Act Release No. 27923 (April 20, 1990), 55 FR 17694.

[3] Letter from James C. Yong, Assistant Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, Commission, dated April 23, 1991. The amendment provides that exercises notices accepted by OCC after midnight are deemed to have been tendered prior to midnight and that options cleared through OCC's International Clearing System (*i.e.*, foreign currency options) are not eligible for late processing. The purpose of the amendment is to clarify the treatment of foreign currency options and to clarify that the exercise settlement date for late exercise notices accepted by OCC after midnight is the same date as for late exercise notices accepted by OCC before midnight. OCC is currently operating under essentially the same procedures, therefore, because the amendment did not substantively alter the terms of the original proposal, notice of the amendment was not published in the **Federal Register.**

[4] The rules of the Chicago Board Options Exchange ("CBOE"), the Philadelphia Stock Exchange ("Phlx"), the American Stock Exchange ("Amex") or the Pacific Stock Exchange ("PSE") (collectively, "Exchange Rules") authorize the timeframes within which customers may exercise option contracts. For example, Exchange Rules provides that a member organization may exercise a non-expiring option contract at any time consistent with OCC rules. OCC rules, in turn, provide that an OCC clearing member desiring to exercise such an option contract is required to tender to OCC a notice of the member's intent to exercise before 7 p.m. Central Time on the day prior to the desired exercise date. OCC will accept an exercise notice for a non-expiring option contract after 7 p.m. only to correct a *bona fide* error (*i.e.*, a processing error).

Exchange Rules provide that a clearing member desiring to exercise an expiring option contract must notify the exchange on which the option contract is traded of the member's intent to exercise by 5:30 p.m. Eastern Time on the third Friday of the expiration month (subject to the right of an Exchange member to make exceptions in special circumstances specified in Exchange Rules). *See e.g.*, CBOE rule 11.1 and Phlx Rule 1040. This also is the latest time at which an exercise instruction for an expiring option contract may be accepted by a member organization from any customer. OCC's cut-off time for accepting exercise notices for expiring option contracts is 11 p.m. Central Time on the expiration date.

OCC's proposed rule change does not address exercises of expiring options or exercises of foreign currency options, and the provisions discussed herein for exercising non-expiring option contracts do not apply to expiring option contracts. Under OCC rules and the terms of the option contract, OCC is obligated to honor all exercises of expiring contracts that are tendered prior to the expiration time.

[5] See *infra* for an explanation of OCC's critical processing.

[6] OCC rule 601(e).

[7] All times referred to are Central Time unless otherwise stated.

[8] E.g., such notices will be accepted by OCC only to the extent that OCC is able to complete processing of the notice and notify the assigned clearing member prior to the market opening.

[9] See *infra* n. 3.

[10] The proposal amends OCC rule 801(e) to authorize OCC's Chairman and President to delegate their authority to approve the acceptance of a late exercise notice. OCC has indicated that the Chairman and President will use this authority to delegate the responsibility only to senior officers at or above the rank of First Vice President. Letter from James C. Young, Assistant Vice President and General Counsel, OCC, to Sonia G. Burnett, Attorney, Commission, dated October 25, 1990.

[11] Margin requirements for exercises accepted after critical processing must be calculated manually. OCC calculates the margin requirement for the exercised contract using the closing prices of the day the member receives written confirmation that the exercise is accepted, based on 130% of the in-the-money amount per contract for the assigned clearing member, and 70% of the in-the-money amount per contract for the exercising clearing member. For example, an option contract accepted for exercise on the evening of November 14, would be margined as an unexercised position in OCC's daily margin system on the night of November 14. On the evening of November 15, margin would be calculated manually and input as a special variation requirement prior to the start of business on November 16.

If a margin deficit results, the clearing member must satisfy the deficit or additional margin requirement by submitting a draft for cash. Because the margin requirement for a late exercise is not included in OCC's regular margin system or reported on OCC regular margin reports, the supplemental draft must be submitted in addition to margin that already has been submitted by the member. OCC will itemize the margin for each exercise and report it to members as a special margin requirement prior to the start of the business day after the member receives written confirmation of the exercise. The clearing member, therefore, is able to easily identify and promptly satisfy the addtional margin requirement.

[12] The assigned member usually requires approximately one-half hour to correct any procedural errors, thus, OCC must notify members at least one-half hour prior to the opening of the market (e.g., 8 a.m.). See letter from Stuart C. Harvey, Jr., Staff Counsel, OCC, to Sonia G. Burnett, Attorney, Commission, dated November 1, 1990.

The manner of notice to the assigned clearing member will depend upon the time the late exercise notice is accepted by OCC. For notices accepted after 7 p.m. (*i.e.*, the cut-off time for submitting regular exercise notices), but before 11:01 p.m. (*i.e.*, the start of critical processing),[13] OCC will notify the assigned clearing member before 7 a.m. The notice will be in the form of a delivery advice, showing the number of shares and value of each assignment. OCC will transmit this information to the member electronically, by computer tape or by hard copy deposited in the assigned clearing member's locked box. For notices accepted after the start of OCC's critical processing, OCC will notify assigned clearing members by facsimile or by telephone, and OCC will make every effort to notify the assigned clearing member before 8 a.m. Subsequently, OCC will deposit a deivery advisory in the member's locked box, in most instances, by 7 a.m. but, in no event later than 9 a.m.

OCC requires that a clearing member support all late exercise notices with a written statement of the reasons and circumstances surrounding the late filing. OCC will review the clearing member's initial written response and if necessary conduct a further review including a personal interview. If, after receiving the clearing member's written response and conducting a personal interview, OCC determines that the late filing was not to correct a *bona fide* error, OCC may impose a fine or other sanctions on the clearing member pursuant to OCC's disciplinary proceedings.[14]

OCC proposes to amend rule 801(e) to state that OCC will not accept revocations of previously tendered exercises [15] after the start of critical processing. To process a late request to revoke a previously tendered exercise notice after critical processing has begun, OCC would have to interrupt its processing. Processing revocations in this manner is manually intensive and potentially could delay delivery of reports to other clearing members.

In addition to modifying OCC's processing procedures, the proposal will modify OCC's processing fees for late notices. OCC will charge lower processing fees for notices received during the pre-critical processing period but prior to the beginning of critical processing, since such notices can be included in OCC's automated processing cycle. Specifically, OCC will charge $500 per clearing member for any late notice tendered between 7 p.m. and 10 p.m. and $2,000 per clearing member for late notices tendered between 10:01 p.m. and the start of critical processing provided the request does not materially affect the start of critical processing.

After the beginning of the critical processing period, OCC will charge a substantially higher processing fee of $10,000 per line item. Fifty percent of the fee will be allocated to the assigned clearing member or members on a *pro rata* basis.[16] The notices received after the beginning of critical processing cannot be included in the automated processing cycle and, therefore, the assignment of these late notices must be performed mannually. The proposed fees are intended to be reflective of the effort required by OCC and the assigned clearing member or members to process the notices prior to the beginning of the next day's trading session. (The assigned clearing member or members often must allocate the exercise to one or more customers. Depending on when the member receives notice from OCC, the member may be required to allocate the notice manually.) OCC will inform the exercising clearing member of the applicable fee at the time the late exercise is accepted.

The proposed changes to OCC's late notice provisions will not affect OCC's existing policy concerning acceptance and processing of foreign currency option exercises. OCC will continue to exclude foreign currency exercises from the late notice provisions.[17]

II. Discussion

The Commission believes that OCC's proposal is consistent with the Act, and in particular section 17A of the Act. Specifically, the Commission believes OCC's proposal promotes the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds in its custody or control or for which it is responsible while allowing OCC to continue its exception processing of late exercise notices for *bona fide* errors.

The Commission believes that OCC's proposal facilitates the protection of investors consistent with section 17A, by adding certainty to OCC's late notice provisions and by more clearly defining the conditions under which OCC will accept late exercises. Because late notices are accepted by OCC after the close of the market, these provisions to some degree may increase the potential that an exercise notice is submitted for processing under the late notice provisions to take advantage of an event occurring after the close of the market that affects a dramatic rise or fall in the market price of the underlying securities. Although OCC believes this possibility is remote, OCC limits the exception processing to the correction of processing errors to help prevent abuse of the late notice provisions.[18]

The Commission believes that OCC's internal controls are designed to minimize the potential for abuse of the late exercise notice provisions. OCC's currently has internal procedures to monitor late notice processing and to help ensure against abuse of the late exercise notice provisions.[19] As part of OCC's internal review process, OCC investigates each late exercise request to verify that the late exercise request was made to correct a *bona fide* processing error. If OCC determines that a clearing member submitted a late exercise notice that was not for the purpose of correction of a *bona fide* error, OCC may subject the exercising member to disciplinary proceedings pursuant to OCC rules, chapter XII.[20] In

[13] OCC's critical processing period usually begins at 11 p.m., however, the start of OCC's critical processing period may vary as much as one-half hour depending on the volume of exercise data and time at which OCC completes the matching process for that data.

[14] See OCC By-laws and Rules, rule 1201.

[15] The primary reason for members requesting a revocation of a previously tendered exercise notice is that the exercise is discovered to be out-of-the-money after the member has notified OCC of its intention to exercise. The occurrence of this problem, however, should be less prevalent because OCC has developed automated edits to flag out-of-the-money exercises prior to the start of critical processing. When an out-of-the-money exercise is found, OCC will contact the exercising clearing member to confirm the member's intention to exercise.

[16] For example, when clearing member *A* notifies OCC of its intention to exercise its option contract and OCC assigns clearing member *A's* contract to a clearing member with a short position, i.e., clearing member *B*, OCC would pass through to clearing member *B* 50% of the amount charged member *A*. If OCC assigned clearing member *A's* contract to clearing members *B* and *C*, 50% of the late exercise fee would be passed through, *pro rata*, to clearing members *B* and *C*.

[17] Because foreign currency option contracts may only be exercised in accordance with OCC procedures for expiring option contracts, OCC will continue to exclude such contracts from the late notice provisions.

[18] ICC believes that late filings to take advantage of late breaking news should occur infrequently, if at all, since the holder of the non-expiring option contract may exercise the option contract the following day or at any time until it expires pursuant to OCC's normal exercise procedures.

[19] OCC's existing Rules require OCC to reject a late exercise notice if OCC determines that the purpose for filing the late notice is not to correct a *bona fide* error, and to report to the exchange where the underlying securities are traded or where the exercising clearing member is a member no later than the next business day late exercise notices accepted by OCC.

[20] From January 1990, to date, OCC has received no post-critical notices, but has received three late

Continued

addition, OCC also will send to the exchange on which the option is traded a report of the late exercise.[21]

The Commission intends to monitor late exercise notices because of the potential for abuse. Accordingly, OCC has agreed to provide the Commission with a report for each calendar quarter in which OCC has accepted late exercise notices. The report will contain the time and date that the late exercise notice was filed, the name of the clearing firm that submitted the notice, and the reasons for each late exercise notice OCC accepted during the calendar quarter.[22]

The Commission believes that OCC's rejection of late notices in circumstances where the assigned member will have less than 30 minutes before the opening of the market to process the exercise is appropriate. This will provide OCC and its members sufficient time to complete late exercise notice processing without impeding the prompt and efficient processing of regular option exercise notices.

OCC's proposal to reject revocations of previously tendered exercise notices after the start of critical processing will allow OCC to continue OCC's automated processing of clearing member position changes without interruption. This policy will facilitate continuity in OCC's procedures, lessen the potential for processing errors while maintaining OCC's control over its processing procedure. The Commission believes that OCC's proposal, to continue to accept certain late notices, and to reject revocations after the start of critical processing, promotes prompt and accurate clearance and settlement of option exercise notices.

OCC has raised significantly its fees for processing late notices after the beginning of the critical processing period, from $5,000 per late notice to $10,000 per line item listed in a late notice and will pass through some of those fees to the assigned clearing member. The Commission believes that these fees are reasonable and that allocating some of those fees to the assigned clearing member in circumstances where that member must engage in exception processing is appropriate.

notices during the pre-critical period. OCC investigated the circumstances surrounding all late exercise notices processed from January 1989, to date, and OCC determined that all involved the correction of a *bona fide* error.

[21] *See* letter from James C. Yong, Assistant Vice President and Deputy General Counsel, OCC to Jonathan Kalman, Assistant Director, Commission, dated June 20, 1991.

[22] *See supra* n. 20.

III. Conclusion

For the reasons discussed in this order, the Commission finds that the proposal is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-OCC-90-03) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-(a)(12) (1989).

Jonathan G. Katz,

Secretary.

[FR Doc. 91-16408 Filed 7-9-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25343]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 3, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 29, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant application(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy Initiatives, Inc., et al. (70-7815)

Energy Initiatives, Inc., Camchino Energy Corporation ("Camchino"), OLS Power Limited Partnership ("OLS"), OLS Energy-Chino ("Chino") and OLS Energy-Camarillo ("Camarillo") (collectively "Applicants"), each located at One Gatehall Drive, Parsippany, New Jersey 07054, and each an indirect subsidiary of General Public Utilities Corporation, a registered holding company, have filed an application and amendments thereto under sections 67(a), 7 and 12(b) of the Act and rules 45 and 50(a)(5) thereunder.

The Commission first issued a notice on November 30, 1990 (HCAR No. 25198) of Applicants' proposal for Chino and Camarillo to restructure their respective leases (with General Electric Capital Corporation ("GECC")), energy service agreements (with the State of California, acting through its Department of General Services) and related financing agreements for their qualifying cogeneration facilities. Additionally, the Applicants proposed certain intrasystem loans and capital contributions, amendments to Revolving Credit Agreements ("Credit Agreements") with GECC and borrowings thereunder.[1]

The Applicants have now further amended their proposal to request authorization for Camchino to make a loan to OLS ("Camchino Loan"), in the principal amount of $300,000, to fund the subordinated loans by OLS of up to $150,000 to Chino and Camarillo, or an aggregate principal amount of $300,000 ("OLS Loans"). The unpaid principal of the Camchino Loan will not be payable until Chino and Camarillo have repaid the principal of the OLS Loans. The outstanding principal, and accrued but unpaid interest, on the Camchino Loan, will bear interest at a rate per annum of 5% in excess of the prime rate, payable quarterly; provided that any interest in excess of amounts received by OLS on account of the OLS Loans, or otherwise received by OLS from Chino or Camarillo, will be deferred until sufficient funds therefor are available to OLS.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-16406 Filed 7-9-91; 8:45 am]

BILLING CODE 8010-01-M

[1] A supplemental notice was issued by the Commission on June 28, 1991 (HCAR No. 25338) of Applicants request for additional authorization for Acquisition Corp., the intermediary holding company between OLS and Chino and Camarillo, to energy into a pledge agreement pledging the stock of Chino and Camarillo to secure the obligations of Chino and Camarillo under their respective Credit Agreements with GECC.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before [July 30, 1991.].

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC., on July 3, 1991.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23858.
Petitioner: General Motor Corporation.
Sections of the FAR Affected: 14 CFR part 34, subpart D.
Description of Relief Sought: To allow some of the engines manufactured by General Motors to be exempt from the smoke emission requirements.

Docket No.: 23875.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 45.25(b)(2).
Description of Relief Sought: To extend for at least two years Exemption No. 4061D from § 45.25(b)(2). Exemption No. 4061D allows Beech Aircraft Corporation to display 12-inch high registration markings on the wing pods for Model 2000 and 115-67 Beech Aircraft. Exemption No. 4061D expires December 31, 1991.

Docket No.: 25043.
Petitioner: United Executive Jet, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(b).
Description of Relief Sought: Extension of Exemption No. 4740 from §§ 91.191(a)(4) and 135.165(b) of the Federal Aviation Regulations (FAR). To allow United Executive Jet, Inc. to operate its Learjet Model 35 aircraft with only one high frequency communications receiver and one Global/VLF Omega long range navigation receiver.

Docket No.: 26006.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought: To extend Exemption No. 5125 from § 47.69(b) of the Federal Aviation Regulations, which, allows the operation of aircraft outside the United States using Dealer's Aircraft Registration Certificate. Exemption No. 5125 will expire on January 5, 1992.

Docket No.: 26512.
Petitioner: Reeve Aleutian Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.356.
Description of Relief Sought: To permit Reeve Aleutian Airways, Inc. to be exempt from meeting Federal Aviation Administration deadlines for installation of TCAS-II equipment by December 30, 1991, the deadline for 50 percent compliance.

Docket No.: 26518.
Petitioner: Bighorn Airways, Inc.
Sections of the FAR Affected: 14 CFR 135.15(a).
Description of Relief Sought: To allow Bighorn Airways, Inc. to operate two of its multiengine, turbine-powered aircraft (CASA Models 212-200, N107BH, s/n 165 and N117BH, s/n 171) without the use of cockpit voice recorders.

Docket No.: 26534.
Petitioner: GE Government Services, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a).
Description of Relief Sought: To permit GE Government Services, Inc. to be exempt from meeting Federal Aviation Administration deadlines for installation of TCAS-II equipment by December 30, 1991, the deadline for 50 percent compliance.

Docket No.: 26536.
Petitioner: Pan American World Airways Inc.
Sections of the FAR Affected: 14 CFR 121.417(c)(2)(i)(A).
Description of Relief Sought: To allow Pan American World Airways Inc. to continue to conduct all required crewmember training in the operation of Type A, Type I, and Type III passenger emergency exists on Pan Am Airbus aircraft using a single Federal Aviation Administration accepted door training device.

Docket No.: 26544.
Petitioner: Westates Airlines Inc.
Sections of the FAR Affected: 14 CFR 91.607.
Description of Relief Sought: To allow Westates Airlines Inc. to use the jump seat of its CV-580 aircraft for an additional crewmember, a check airman, or a Federal Aviation Administration observer even though the passenger cabin is full.

Docket No.: 26545.
Petitioner: Trans-Florida Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.356.
Description of Relief Sought: To permit Trans-Florida Airlines, Inc. to operate without installation of a TCAS II system.

Docket No.: 26551.
Petitioner: Air Resorts Airlines.
Sections of the FAR Affected: 14 CFR 121.356(a).
Description of Relief Sought: To permit Air Resorts Airlines to be exempt from meeting Federal Aviation Administration deadlines for installation of TCAS-II equipment by December 30, 1991, and December 30, 1993, or, at least be exempt from

December 30, 1991, deadline for 50 percent compliance.

Docket No.: 26570.

Petitioner: Pere Air.

Sections of the FAR Affected: 14 CFR 43.3(a) and (g).

Description of Relief Sought: To allow Pere Air pilots to perform the preventive maintenance of removing and/or replacing the passenger seats of aircraft used in FAR Part 135 operations.

Docket No.: 26585.

Petitioner: Air San Juan/ChartAir, Inc.

Sections of the FAR Affected: 14 CFR 135.25, 135.87(c) and subpart J.

Description of Relief Sought: To allow company pilots to remove and replace aircraft seats without mechanic logbook sign-off.

[FR Doc. 91-16431 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 173; Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radar; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the meeting of Special Committee 173 to be held July 15-16, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) Review and approval of meeting agenda; (3) Prepare draft Terms of Reference for SC-173, RTCA Paper No. XXX-91/SC173-X (enclosed); (4) Presentations by interested organizations; (5) Task assignments; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 17, 1991.

Steve Zaidman,

Designated Officer.

[FR Doc. 91-16350 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 159; Minimum Operational Performance Standards for Supplemental Airborne Navigation Equipment Using Global Positioning System (GPS); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the nineteenth meeting of Special Committee 159 to be held July 22-23, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 1 p.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the eighteenth meeting held April 22-24, 1991, RTCA paper no. XXX-91/SC159-XXX (enclosed); (3) Review status of MOPS for supplemental navigation equipment using GPS; (4) Review of revised terms of reference, RTCA paper no XXX-91/SC159-XXX (enclosed); (5) Review of comments received from EUROCAE and other organizations; (6) Develop Future Work Program and establish working groups; (7) Review preliminary draft of GPS/GLONASS Minimum Operational Performance Standards, RTCA paper No. XXX-91/SC159-XXX (enclosed); (8) Assignment of tasks; (9) Other business; (10 Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 25, 1991.

Steve Zaidman,

Designated Officer.

[FR Doc. 91-16351 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 162; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the fifteenth meeting of Special Committee 162 to be held July 24-26, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the fourteenth meeting held March 13-15, 1991; (3) Reports of related activities being conducted by other organizations; (4) Prepare amended terms of reference for SC-162; (5) Prepare guidance for the ATNI System Requirements and MOPS Working Group; (6) Review Draft of Applications (part 2) Guidance; (7) Review status of Upper Layers (part 3) Guidance and redirect if required; (8) Review Status of Systems Security and Management Guidance; (9) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 25, 1991.

Steve Zaidman,

Designated Officer.

[FR Doc. 91-16352 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-13-M

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Cancelation of Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancelation.

SUMMARY: The FAA is issuing this notice to advise the public that the July 23, 1991, meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee (56 FR 29747, June 28, 1991) of the Aviation Rulemaking Advisory Committee has been canceled.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Emergency Evacuation Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9554.

Issued at Washington, DC, on July 3, 1991.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-16353 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Benton County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Benton County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Division Administrator, Federal Highway Administration, suite 501, Evergreen Plaza, 711 South Capitol Way, Olympia, Washington 98501, telephone (206) 753-9413; Dennis D. Skeate, P.E., County Engineer, Benton County Engineer and Road Department, P.O. Box 110, Courthouse, Prosser, Washington 99250, telephone (509) 786-5611.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation and Benton County, will prepare an EIS on a proposal to replace an existing one-lane bridge over the Yakima River, known as the South Crossing Twin Bridges. The project area lies approximately one mile north of the City of West Richland, Washington, near the intersection of Grosscup Road with Yakima River Drive and Snively Road.

Replacement of the existing bridge is considered necessary to improve safety and accommodate the projected traffic demand. Weight restrictions on the existing bridge severely limit emergency vehicle access. Deterioration of the structure and its encroachment into the 100-year floodway could each lead to the possible failure and collapse of the bridge. Substandard widths and geometrics on the approach roadways also create a safety hazard to motorists.

Alternatives under consideration include: (1) Taking no action; (2) replacing only the south span of the existing twin bridges; (3) replacement of both the north and south spans of the existing twin bridges on a slightly altered alignment at approximately the same location; and (4) removal of the existing south span and construction of a new river crossing approximately one-fourth mile downstream from the present location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in the proposal.

A preliminary scoping meeting will be held to gather public input regarding the scope of the investigation of alternatives. A public hearing will also be held. The time and place of the meeting and hearing will be advertised by public notice. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding this intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 1, 1991.

Lynn A. Porter,

Area Engineer, Olympia, Washington.

[FR Doc. 91-16379 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. LVM 86-01, Notice 3]

Passenger Automobile Average Fuel Economy Standards; Final Decision To Grant Exemption for Model Year 1986; Rejection of Petitions for Model Years 1988-91; Ferrari S.p.A.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final decision.

SUMMARY: This decision is issued in response to petitions filed by Ferrari, S.p.A. (Ferrari) requesting that it be exempted from the generally applicable corporate average fuel economy standards for model years 1986, 1988, 1989, 1990 and 1991, and that lower alternative standards be established for Ferrari in each of those model years. This decision exempts Ferrari from the generally applicable standard for model year 1986 and establishes an alternative standard of 16.1 mpg.

NHTSA has concluded that Ferrari is not eligible for a low volume exemption for the other model years. This notice therefore rejects the petitions for model years 1988, 1989, 1990 and 1991. (Ferrari's petition for an exemption for MY 1987 was previously rejected.) This decision reflects a change in the agency's approach to determining eligibility for low volume exemptions when there are multiple manufacturers within a control relationship. Comments on the revised approach were requested in a notice published in the **Federal Register** (55 FR 38822) on September 21, 1990.

DATES: Effective Date for exemption/alternative standard: August 9, 1991. The exemption and alternative standard apply to Ferrari for model year 1986. Petitions for reconsideration must be submitted by August 9, 1991.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be provided.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION:

Background

Section 502(c) of the Motor Vehicle Information and Cost Savings Act ("Act"), 15 U.S.C. 2002(c), provides that certain manufacturers of passenger automobiles (referred to here as "low volume manufacturers") may be exempted from the generally applicable corporate average fuel economy ("CAFE") standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for the manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in the model year ("MY") for which the exemption is sought and in the second model year preceding that model year.

In January 1986, Ferrari filed a petition requesting an exemption from the MY 1986-1988 CAFE standards for passenger cars. Although Ferrari's petition was not filed more than 24 months before the beginning of MYs 1986 and 1987, as is generally required by 49 CFR 525.6(b), the agency found

that there was a good cause for the late filing. Therefore, on December 10, 1986, NHTSA published a notice proposing to grant the requested exemptions for all three model years, and to establish alternative standards for Ferrari for each model year. 51 FR 44492.

That notice, which relied in large part on a 1978 interpretation involving Maserati, included a discussion of Ferrari's eligibility for a low volume exemption. (The 1978 interpretation, which was addressed to Howard E. Chase, Esq., is discussed below.) The agency stated the following in its December 1986 notice:

> By itself, Ferrari would qualify as a low volume manufacturer under section 502(c) of the Act, since it manufactures fewer than 4,000 passenger cars worldwide in any model year. However, section 503(c) of the Act specifies that any reference to automobiles manufactured by a manufacturer "shall be deemed to include all automobiles manufactured by persons who control * * * such manufacturer." Fiat Motors, which produces many more than 10,000 automobiles in each model year, owns 50 percent of Ferrari. When Ferrari originally applied for a low volume exemption under section 502(c) in 1977, NHTSA found that 50 percent ownership of Ferrari by Fiat was conclusive evidence that Fiat controlled Ferrari for purposes of section 503(c) of the Act. Accordingly, the productions of Fiat and Ferrari were combined for the purposes of title V of the Act, pursuant to section 503(c). When the combined production of Fiat and Ferrari were considered together, Ferrari was not eligible to apply for a low volume exemption under section 502(c).
>
> This situation was unchanged until Fiat withdrew from the U.S. market at the end of the 1982 model year. Fiat has not exported any of its vehicles to the United States since that date. In response to this changed situation, Ferrari asked NHTSA in November, 1984 to change its previous opinion that Ferrari's production would be combined with Fiat's. This request was based on the language of section 501(9) of the Act. That section reads as follows: "The term 'manufacture' (except for purposes of section 502(c)) means to produce or assemble in the customs territory of the United States, or to import." Ferrari argued that since Fiat did not produce or assemble any vehicles in the customs territory of the United States or import any vehicles into the United States, it did not "manufacture" any vehicles for the purposes of section 503(c). Accordingly, Ferrari urged that it should now be eligible to apply for a low volume exemption under section 502(c) of the Act. NHTSA sent an interpretation to Ferrari in February, 1985, stating that the agency agreed that Ferrari was now eligible to apply for a low volume exemption.

On January 1, 1987, Fiat acquired 100 percent ownership of Alfa Romeo. As a result of the acquisition, both Ferrari and Alfa Romeo were under the common control of Fiat beginning with MY 1987. In a notice published in the **Federal Register** (54 FR 40665, 40667) on October 3, 1989, NHTSA discussed the effect of Fiat's acquisition of Alfa Romeo on Ferrari's eligibility for low volume exemptions. The agency stated:

> That acqusition rendered Ferrari eligible under title V for an exemption for [MY 1987]. Section 503(c) requires all of the automobiles imported by Alfa Romeo to be added to those manufactured by Ferrari to determine whether Ferrari is eligible for a low volume exemption for MY 1987 and thereafter. Since Alfa Romeo imported 8,930 cars into the United States for MY 1987, Alfa Romeo would be considered a "manufacturer" for purposes of section 502(c). Further, because Alfa Romeo and Ferrari are under the common control of Fiat, Alfa Romeo's 8,930 import cars would be added to Ferrari's low volume manufacture status. The resulting total exceeds the 10,000 vehicle limitation on eligibility. Accordingly, Ferrari is statutorily ineligible for a low volume exemption for MY 1987.

In the October 1989 notice, which sought to follow past precedent while addressing a somewhat different factual situation, the agency thus considered Ferrari's eligibility for a low volume exemption by counting the petitioner's (Ferrari's) worldwide production and adding to that figure the number of vehicles imported by manufacturers within a control relationship with Ferrari (Alfa Romeo). Thus, that notice indicated that Ferrari remained eligible for an exemption for MY 1988, since Alfa Romeo imported only 4166 cars in that year, while Ferrari's worldwide production was 3996.

September 1990 Supplemental Notice

As discussed below, subsequent analysis by NHTSA called into question the conclusion that Ferrari was eligible for exemptions for MYs 1986 and 1988. The analysis also called into question a number of the agency's prior interpretations regarding eligibility for low volume exemptions of manufacturers that are controlled by, or are under common control with, other automobile manufacturers. On September 21, 1990, NHTSA published in the **Federal Register** (55 FR 38823) a supplemental notice requesting comments on Ferrari's eligibility for MY 1986 and 1988 exemptions, and on whether NHTSA should revise its approach to determining eligibility for low volume exemptions when there are multiple manufacturers within a control relationship.

The September 1990 notice included a lengthy discussion of the agency's past precedent in this area. The first time NHTSA addressed the issue of which vehicles should be counted among those of multiple manufacturers within a control relationship for purposes of determining eligibility for a low volume exemption was in the letter addressed to Howard E. Chase, Esq., cited above. That letter, which was dated July 26, 1978, addressed the eligibility of Maserati for a low volume exemption. Maserati itself produced fewer than 10,000 cars worldwide. However, it was under common control with Innocenti, a company which produced more than 10,000 cars annually but did not import any into the U.S.

In addressing the relationship of sections 501(9), 502(c), and 503(c), NHTSA stated the following in the Chase letter:

> The key question * * * involves section 503(c). The question is whether "manufacturer" in section 503(c), as that section applies to 502(c), means "to produce or assemble in the customs territory of the United States, or to import" or means "to produce or assemble, regardless of the geographical location of the act." The former, restricted definition is given in section 501(9) and applies, except for the purposes of section 502(c), to all of title V. The latter, unrestricted definition is derived from the phase "manufactured (whether or not in the United States)" in the first sentence of section 502(c) and applies for the purposes of that section.

In the Chase letter, NHTSA interpreted the word "manufacture," as used in section 503(c) and applied to section 502(c), to have the "restricted" meaning. The agency therefore concluded that the Innocenti automobiles would not be counted together with the Maseratis for the purposes of determining eligibility for an exemption under section 502(c).

In the September 1990 notice, NHTSA indicated that, upon further consideration, it now believes that it did not give enough weight in the Chase letter to the language in section 501(9) that expressly provides that the "restricted" definition of that subsection does not apply with respect to section 502(c). The agency also concluded that the Chase interpretation leads to a result that is inconsistent with Congressional intent.

The legislative history of section 502(c) demonstrates that Congress authorized low volume exemptions to provide relief for small manufacturers. For example, the House Report discussed this provision under the heading "small manufacturers." H.R. Rep. No. 94–340, 94th Cong., 1st Sess. 90 (1975). The Conference Report, in describing the Senate version of this provision, described it as providing the Secretary authority to exempt "small (less than 10,000 vehicles per year) manufacturers" from passenger car

standard. S. Rep. No. 94–516, 94th Cong., 1st Sess. 151 (1975).

Congress also indicated that it was affording this relief to "small" manufacturers because of their limited flexibility to improve fuel economy. For example, the discussion in the Senate Report of an earlier version of section 502(c) states that "[t]he purpose of the exemption is to provide relief for the special purpose manufacturers, like the Checker Motors Corporation, which manufacture automobiles for a rather narrow purpose, and are limited in their flexibility to improve fuel economy." S. Rep. No. 94–179, 94th Cong., 1st Sess. 21 (1975).

The Fiat Group, which includes Ferrari and Alfa Romeo, has considerable flexibility to improve the fuel economy of its vehicles imported into the United States, particularly given the size and manufacturing expertise of its component companies. The Fiat Group is the world's seventh largest producer of passenger cars, producing about 1.5 million passenger cars per year with a high level of technology such as continuously variable transmissions and direct injection diesel engines on some models sold in Europe. Fiat builds a range of cars from some of the smallest most fuel-efficient cars in the world to the very expensive, ultra-high performance Ferrari models. Alfa Romeo itself is not a small manufacturer, having produced 229,000 cars in 1988.

The clear purpose of providing a special worldwide definition of "manufacture" for section 502(c), as opposed to the more limited definition set forth in section 501(9) that is applicable to the rest of the statute, was to prevent large foreign manufacturers from obtaining the benefits of low volume exemptions by virtue of importing only a small number of cars in the United States. Congress did not contemplate that lower, alternative standards would be available to firms under the control of large foreign automobile manufacturers simply because those manufacturers were separate corporate entities.

NHTSA also expressed concern that its prior approach may inappropriately confer a competitive advantage on foreign manufacturers. A U.S. subsidiary of General Motors, Ford, or Chysler that produced sports cars obviously could not qualify for a low volume exemption, yet a subsidiary of Fiat has been able to qualify under the agency's prior approach.

In the September 1990 notice, NHTSA tentatively concluded that all cars produced worldwide by all manufacturers within a control relationship should be counted for purposes of low volume exemption eligibility. Thus, in considering whether Ferrari is eligible for a MY 1986 low volume exemption, the agency would count, in addition to the worldwide production of Ferrari itself, the worldwide production of Fiat (which controls Ferrari). Similarly, in considering whether Ferrari is eligible for a MY 1988 low volume exemption, the agency would count, in addition to the worldwide production of Ferrari, the worldwide production of Fiat and Alfa Romeo (which came under common control with Ferrari in 1987). The agency stated its belief that this contemplated interpretation would give appropriate weight to the language in section 501(9) that expressly provides that the "restricted" definition of that subsection does not apply with respect to section 502(c). Since this result would reverse a longstanding interpretation, NHTSA requested comments on its new approach.

With respect to the date the revised interpretation would become effective, NHTSA tentatively concluded that it would apply the interpretation to all petitions that have not yet been finally ruled upon. The agency indicated that it would not seek to retroactively withdraw exemptions that would not have been granted under the new interpretation.

The agency noted that it had considered applying the old interpretation to petitions that had already been filed but not yet been acted upon. NHTSA states, however, that if it were to finally determine that the old interpretation is incorrect and inconsistent with Congressional intent, it would be inappropriate to continue to apply it to pending petitions.

NHTSA also noted that granting Ferrari an exemption for MY 1988 would create difficulties that were not present with earlier exemptions granted under the Chase approach. In those prior cases, only one firm within the control relationship imported any vehicles into the United States. However, in MY 1988, both Ferrari and Alfa Romeo imported cars.

Because of the operation of section 503(c), Ferrari and Alfa Romeo are in essence the same manufacturer for purposes of CAFE standards. As discussed below, under section 502, the same CAFE standard should apply to both manufacturers together. This is true for both generally applicable standards and alternative standards.

Section 502(a), in setting forth the generally applicable standard, specifies a standard for "passengher automobiles manufactured by any manufacturer." Section 502(c)(1), in setting forth requirements relating to low volume exemptions, specifies that such exemptions may not be granted unless the Secretary establishes, by rule, alternative average fuel economy standards for "passenger automobiles manufactured by manufacturers" which receive exemptions under this subsection. Under section 503(c)(1), any reference to "automobiles manufactured by a manufacturer" is deemed to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer. Thus, any CAFE standard which applies to Ferrari should apply to Ferrari and Alfa Romeo together. Therefore, granting Ferrari a low volume exemption in MY 1988 would create a paradox, since Alfa Romeo is indisputably not eligible (given its own worldwide production) for an exemption.

A similar paradox would arise in the context of determining compliance with the statute. Under section 503(a), neither manufacturer may have an independent CAFE value. Instead, by operation of section 503(c), they share a CAFE value that is based on the total volume of cars imported by both companies.

Thus, a decision to grant an exemption to Ferrari while applying the generally applicable standard to Alfa Romeo would cause compliance enforcement difficulties by compelling the agency to try to compare a combined CAFE value to separate CAFE standards. Such difficulties did not arise earlier, under the exemptions granted under the Chase approach, since to company that received an exemption was in a control relationship with another company that imported vehicles into the United States during the model years in question. NHTSA noted that the fact that such problems can occur under the Chase approach is another indication that the approach is incorrect.

Public Comments

In response to the September 1990 **Federal Register** notice, the agency received only one comment, from Fiat Auto R&D U.S.A. That commenter stated that it believes the agency's original interpretation contained in the letter to Howard Chase and in the proposals to grant Ferrari alternate CAFE standards for the 1986 through 1988 model years was correct. Fiat noted that the Chase interpretation has served as a basis upon which NHTSA granted alternate standards for Maserati in the 1978, 1979, 1980, 1984 and 1985 model years, and argued that to not apply the same criterion to Ferrari might create a double

standard. Fiat suggested that to "equitably resolve the issue of Ferrari eligibility," NHTSA should maintain the Chase interpretation for the 1986 through 1988 model year Ferrari petition and to implement the policy outlined in the September 1990 **Federal Register** notice beginning in the 1989 model year.

Agency Decision

After carefully considering the comment from Fiat Auto R&D, NHTSA has decided to make final the revised interpretation set forth in the September 1990 notice. While Fiat Auto R&D stated that it believes the old interpretation was correct, it did not provide any supportive arguments or discuss the analysis presented by NHTSA in support of the revised interpretation.

As indicated above, Fiat Auto R&D argued that it would be equitable for the agency to apply the Chase interpretation to Ferrari in MY 1986 through MY 1988 and to apply the new interpretation beginning with the 1989 model year. NHTSA does not agree with that company's argument that a double standard is created by the fact that Maserati benefited from the old interpretation for MYs 1978, 1979, 1980, 1984 and 1985, since the model years for which Maserati obtained a benefit were earlier than the ones for which Ferrari had pending petitions. However, the agency is concerned about the equity of revising a longstanding interpretation and immediately applying the new interpretation to a petition covering model years which are long over.

Accordingly, and in light of Fiat Auto R&D's suggestion, the agency will apply the Chase interpretation to model years 1986 and 1988. (While Ferrari's petition also covered MY 1987, NHTSA rejected that portion of the petition in its October 1989 **Federal Register** notice, and no party challenged that rejection.) However, as discussed below, NHTSA will only apply the interpretation to the identical factual situation addressed in that longstanding interpretation, i.e., where the (combined) worldwide production of all firms within the control relationship that import vehicles into the United States does not exceed 10,000.

Under this approach, Ferrari will obtain the benefit of the Chase interpretation for MY 1986, since it was the only manufacturer within the "Fiat" control relationship which imported vehicles during that year into the United States, and thus the only one of those manufacturers whose vehicles were subject to the CAFE standards. Further, Ferrari's own worldwide production did not exceed the 10,000 vehicle limitation on eligibility.

However, as discussed below, Ferrari will not obtain any benefits from the interpretation for MY 1988, since the combined worldwide production of the firms within the control relationship that imported vehicles into the United States (Ferrari and Alfa Romeo) exceeds the 10,000 vehicles limitation on eligibility.

The agency's reasons for declining to extend the Chase interpretation beyond the identical factual situation it addressed, even for model years prior to MY 1989, arise from the interplay between changes in the relevant facts between MYs 86 and 87 and fuel economy legislation. Beginning with MY 1987, two firms with the "Fiat" control relationship, Ferrari and Alfa Romeo, imported vehicles into the United States. One of these firms, Alfa Romeo, is indisputably not eligible (given its own worldwide production) for an exemption. As discussed above, because Ferrari and Alfa Romeo are in essence the same manufacture for purposes of CAFE standards, a variety of difficulties would be created by granting a low volume exemption to Ferrari.

Thus, even if NHTSA had decided not to reverse the Chase interpretation, it would not be appropriate to apply that interpretation to allow exemptions in situations in which more than one firm within a control relationship imports vehicles into the U.S. (unless the combined worldwide production of all such importing firms does not exceed the 10,000 vehicle limitation on eligibilty). To the extent that result here is different from the position taken in October 1989 **Federal Register** notice, NHTSA notes that the earlier discussion did not recognize the difficulties described above or appropriately take account of the fact that Ferrari and Alfa Romeo are in essence the same manufacturer for purposes of CAFE.

Ferrari also has a petition before the agency for MYs 1989, 1990 and 1991. Since Ferrari and Alfa Romeo were controlled by Fiat for all of those model years, the total number of vehicles manufacturing by Ferrari and other firms within the control relationship exceeded, 10,000 MHTSA has therefore concluded that Ferrari is not eligible for a low volume exemption for those MYs and rejects the petition.

MY 1986 Exemption

For the reasons set forth above, NHTSA is exempting Ferrari from the generally applicable average fuel economy standard for 1986 MY passenger automobiles. Therefore, it must establish an alternative standard applicable to Ferrari for that model year pursuant to section 502(c) of the Act. Section 502(e) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

NHTSA tentatively concluded in its December 1986 **Federal Register** notice that an alternative standard of 16.0 mpg should be established for Ferrari in that model year.

In May 1988, Fiat R&D submitted a letter which acknowledged that the acquisition of Alfa Romeo into the Fiat Auto group could change the criteria established for an exemption for MY 1987 and MY 1988. That company stated that the agency's decision relative to the granting of an alternative CAFE standard for MY 1986 was totally unaffected by the acquisition of Alfa Romeo, and it urged the agency to issue the proposed alternative standard for MY 1986. No other comments were received on the December 1986 proposal.

The agency is adopting, with one adjustment, the tentative conclusions set forth in the proposal for MY 1986 as its final conclusions, for the reasons set forth in the proposed decision. The one adjustment relates to the fact that while NHTSA tentatively concluded that Ferrari's maximum feasible average fuel economy was 16.0 mpg for MY 1986, final EPA test figures indicate that Ferrari achieved an average fuel economy of 16.1 mpg for that MY. Since it would not be appropriate, after the fact, to conclude that the maximum feasible average fuel economy level achievable by Ferrari is lower than the CAFE level that it actually achieved, NHTSA is adjusting upward its tentative conclusion to reflect those final EPA test figures.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Ferrari. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant." The principal impact of this exemption is that Ferrari will not be required to pay civil penalties for MY 1986. Since this decision sets an alternative standard the level determined to be Ferrari's

maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which measure the amount of emissions per mile travelled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Ferrari's MY 1986 automobiles cannot achieve better fuel economy than 16.1 mpg, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. That decision does not impose any burden on Ferrari. It does relieve the company from having to pay civil penalties for noncompliance with the generally applicable standard for MY 1986. Since the prices of Ferrari automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. Section 531.5(b) is amended by adding paragraph (b)(12); the introductory text of (b) is republished to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(12) Ferrari

Model Year	Average Fuel Economy Standard (miles per gallon)
1986	16.1

Issued on: July 3, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-16308 Filed 7-9-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 3, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0021.

Form Number: ATF Form 4587 (5330.4).

Type of Review: Extension.

Title: Application to Register as an Importer of U.S. Munitions Import List Articles.

Description: Persons engaged in the business of importing articles on the U.S. Munitions Import List are required to register with the Bureau of Alcohol, Tobacco and Firearms and pay a registration fee. The application form facilities the registration and the collection of the registration fees.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: Optionally 1-5 years.

Estimated Total Reporting Burden: 150 hours.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-16304 Filed 7-9-91; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 3, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0906.

Form Number: 8362.

Type of Review: Extension.

Title: Currency Transaction Report by Casinos.

Description: Casinos have to report currency transactions of more than $10,000 within 15 days of the transaction. A casino is defined as one licensed by a State or local government having gross annual gaming revenue in excess of $1,000,000.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Response: 38 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 19,063 hours.

OMB Number: 1545-1079.

Form Number: 9041.

Type of Review: Revision.

Title: Application for Electronic/Magnetic Media Filing of Forms 1041, 1065, 5500-C/R and 5500EZ.

Description: Form 9041 will be filed by fiduciaries, partnerships, and plan sponsors/administrators as an

application to file their returns electronically or on magnetic media; and by software firms, service bureaus, and electronic transmitters to develop auxiliary services.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Response: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 900 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-16305 Filed 7-9-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 91-7]

FEDERAL DEPOSIT INSURANCE CORPORATION

[Docket No. 050984]

FEDERAL RESERVE SYSTEM

[Docket No. R-0734]

The Supervisory Definition of Highly-Leveraged Transactions

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Federal Deposit Insurance Corporation (FDIC); and Board of Governors of the Federal Reserve System (Board).

ACTION: Joint request for comment.

SUMMARY: The three Federal banking agencies have received questions and comments regarding the designation, reporting and delisting of highly-leveraged transactions (HLTs). Additionally, some borrowers have indicated that the HLT designation is viewed as a criticism of credit quality by analysts, bankers and investors, even though the HLT designation does not imply supervisory criticism.

To address these concerns, the Agencies (OCC, FDIC and Board), are seeking public comment on all aspects of the HLT definition and criteria, as well as comments on specific issues raised by questions which the Agencies have received.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Comments should be directed to:

OCC: Communications Division, 250 E Street, SW., Washington, DC 20219; attention: Docket No. 91-7. Comments will be available for public inspection and photocopying at the same location.

FDIC: Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; attention: Docket No. 050984. Comments may be hand delivered to room F-402, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. (FAX number: (202) 898-3838)

Board: Mr. William Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551; Attention: Docket No. r-0734 or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT:

OCC: John W. Turner, National Bank Examiner (202) 874-5170, Chief National Bank Examiner's Office.

FDIC: Garfield Gimber, Examination Specialist (202) 898-6913, Division of Supervision.

Board: Todd A. Glissman, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, (202) 452-3953, and William G. Spaniel, Senior Financial Analyst, Division of Banking Supervision and Regulation (202) 452-3469.

SUPPLEMENTARY INFORMATION:

Throughout the mid to late 1980s, the Federal bank regulatory agencies individually employed supervisory guidelines and definitions related to Highly-Leveraged Transactions (HLTs). These guidelines were issued to provide procedures to examiners for identifying and evaluating this type of financing transaction.

The approach used in these guidelines was to develop a flexible definition of HLTs; encourage financial institutions to establish appropriate internal limits for risk management purposes; and instruct examiners to carefully review internal credit review and monitoring procedures, as well as the overall risks associated with HLTs. In June 1989, the Securities and Exchange Commission (SEC) issued guidance to all public companies requiring disclosure of highly-leveraged transactions in public financial statements.

Prior to the adoption of a common definition of HLTs, financial institutions employed a wide range of definitions. This lack of consistency complicated the job of examiners in identifying and assessing HLT credits, as well as the important supervisory task of monitoring the growth trends of HLT lending. In addition, the lack of a common definition also made it difficult for financial institutions to compare their own performance with that of their peers.

In October 1989, the Agencies adopted a common definition of HLTs. The purpose of this effort was to establish consistent procedures among the Agencies in identifying and assessing HLTs. The HLT definition by itself has never implied any supervisory criticism of individual credits. As with any other commercial loan, an HLT credit is subject to examiner criticism only after a thorough review of the borrower's financial condition, income, and cash flow; the value of any collateral or guarantees; the quality and continuity of the borrower's management; and the borrower's ability to service its debt obligations.

Implementation of the HLT definition by examiners and use of the definition by financial institutions as the basis for making HLT disclosures gave rise to several questions regarding the breadth and content of the definition. In response to these questions, the agencies issued guidance to examiners in February of 1990 and in February of 1991. Among other things, this guidance (1) exempted from the HLT designation loans to small- and medium-sized businesses through the application of a $20 million *de minimis* exception; (2) exempted companies where only a small portion of total debt was HLT related; (3) broadened the criteria for removing (delisting) loans from HLT status; (4) excluded from the definition certain credits that were not intended to be deemed HLTs; and (5) clarified other provisions of the definition.

In September 1990, the Board began collecting HLT data on the Consolidated Financial Statements for Bank Holding Companies (F.R. Y-9C). Prior to collecting this data, the Board sought public comment on the HLT definition and interpretive guidance, as part of revisions to reporting requirements. (The notice was published in the **Federal Register** on April 6, 1990, 55 FR 12894.) Subsequently, the Agencies began

collecting HLT data in Reports of Condition and Income, completed by banks beginning in March 1991. Prior to implementation of revisions to these reports, comment was sought on the HLT definition and interpretive guidance from banking industry associations and from the public. (A notice was published in the **Federal Register** on December 26, 1990, 55 FR 53049.) Most of the comments received in connection with these report revisions came from the banking industry.

Recently, the Agencies have received additional questions and comments regarding HLTs. These comments, many of which have come from borrowers and specific industry groups, have focused on five areas:

(1) The possible use of a cash flow criterion in the definition of HLTs;

(2) The specific criteria for removing loans from HLT status;

(3) The treatment of highly-leveraged firms with investment-grade debt ratings;

(4) The application of the HLT definition to parent companies and their subsidiaries; and

(5) The level of flexibility and judgement allowed to bank management by the HLT definition.

The supervisory definition of HLTs has played an important role in helping the Agencies identify these credits and monitor the exposure of financial institutions over time. In addition, the development of the definition, together with the SEC disclosure requirements, has encouraged financial institutions to focus attention on the need for internal control and review mechanisms, and on the need to structure HLT credits in a way that is consistent with the risks involved. At the same time, the Agencies do not want questions or misunderstandings about the supervisory definition of HLTs to have an adverse impact on the availability of credit to sound borrowers. In this regard, and in view of the questions that have been raised, the Agencies are seeking public comment on ways to improve the identification of HLT credits. This request for comment will give an opportunity to borrowers and industry groups, as well as an additional opportunity to financial institutions, to comment on the supervisory definition. The agencies are seeking comment on the specific topics summarized below as well as all aspects of the definition which follows:

1. Cash Flow Criteria and Guidelines

The Agencies seek comments on the use of a standardized cash flow criterion in conjunction with designating and delisting HLTs. Of particular interest would be comments on:

(a) The use of a standardized cash flow analysis;

(b) Minimum debt service coverage ratios;

(c) The assumptions of these analyses;

(d) Methods to review the appropriateness of cash flow models;

(e) The relationship of cash flows to the overall leverage ratio of an organization; and

(f) Whether or not a single, non industry-specific cash flow criterion could be developed.

2. Delisting Criteria

Several questions regarding the delisting criteria have been raised. Comment is being sought on:

(a) The appropriate historical time frame for reviewing an organization's ability to operate successfully at high levels of leverage,

(b) The appropriate time frame(s) for delisting,

(c) The pertinent economic and financial data required for delisting, and

(d) Other potential delisting criteria.

3. HLT Designations or Organizations with Investment-Grade Debt

Some organizations have questioned the appropriateness and consistency of an organization with investment-grade debt being identified as an HLT. Reasons for not exempting companies with investment-grade credit ratings from the HLT definition include:

(1) The HLT designation was never intended to convey credit quality information or criticism, and

(2) Credit ratings can quickly deteriorate under the burden of heavy debt. The Agencies seek comment on:

(a) The number of HLT borrowers with investment-grade debt ratings;

(b) The effects of the HLT designation on organizations with investment-grade debt; and

(c) The desirability of introducing a credit quality criterion into the HLT definition.

4. Subsidiary HLTs and Their Effects on Consolidated Organizations

The Agencies have received questions regarding the application of the definition to subsidiaries and their parent organizations. The HLT guidelines require that if a company meets the HLT criteria on a consolidated basis, then all debt to the organization is designated as HLT debt. A subsidiary, however, that meets the HLT criteria, but that does not cause the consolidated organization to meet the HLT criteria, may stand alone as an HLT. The questions received have focused on having HLT subsidiaries designated as "stand-alone" entities rather than consolidating the HLT with its parent or other subsidiaries for reporting purposes. The Agencies seek comment on:

(a) Potential guidelines for designating subsidiaries as "stand-alone" entities, and

(b) The current effects of the consolidation criteria on the pricing, structure and availability of credit.

5. Definitional Flexibility

Some questions have been raised regarding the degree of flexibility and judgment that may be exercised by bank management in designating credits as HLTs. In this regard, comment is requested on whether the supervisory definition of HLTs should be eliminated and, instead, allow management to designate HLTs based upon the bank's own internal loan review and categorization systems. This approach would be subject to examiner or supervisory review during on-site examinations in order to ensure that the definition used meets supervisory needs and to encourage an element of consistency among banks. Such an approach would provide a measure of flexibility for management to take account of a wide range of factors, including cash flow, in designating credits as HLTs. The Agencies seek comment on whether this approach would result in individual banks giving different designations to the same credits, or employing different criteria, based upon differences in their internal loan evaluation and assessment systems. Comment is also sought on whether this would lead to inconsistent treatment among banks or complicate supervisory risk assessments of the impact of HLT lending.

Appendix

Definition and Guidance Regarding Highly-Leveraged Transactions ("HLTs").

Following is a consolidated version of the current guidance on HLTs. This appendix reflects all previous guidance issued by the three federal banking agencies.

Summary of Definition

A bank or bank holding company is considered to be involved in a highly-leveraged transaction when credit is extended to or investment is made in a business where the financing transaction involves the buyout, acquisition, or recapitalization of an existing business *and* one of the following criteria is met:

(a) The transaction results in a liabilities to-assets leverage ratio higher than 75 percent; or

(b) The transaction at least doubles the subject company's liabilities and results in a

liabilities-to-assets leverage ratio higher than 50 percent; or

(c) The transaction is designated an HLT by a syndication agent or a federal bank regulator.

Additional Guidance on the Definition of HLTs

A highly-leveraged transaction is a type of financing which involves the restructuring of an ongoing business concern financed primarily with debt. The purpose of an individual credit is most important when initially determining HLT status. Once an individual credit is designated as an HLT, all currently outstanding and future obligations of the same borrower are also included in HLT totals. This includes working capital loans and other ordinary credits, until such time as the borrower is delisted.

The regulatory purpose of the HLT definition is to provide a consistent means of aggregating and monitoring this type of financing transaction. It must be pointed out that the HLT designation does not imply a supervisory criticism of a credit. Before any HLT or any other credit is criticized, an examiner should review a whole range of factors on a credit-by-credit basis. These factors include cash flow, general ability to pay interest and principal on outstanding debt, economic conditions and trends, the borrower's future prospects, the quality and continuity of the borrower's management, and the lender's collateral position. Participation of banking organizations in highly-leveraged transactions is not considered inappropriate so long as it is conducted in a sound and prudent manner, including the maintenance of adequate capital and loan loss reserves to support the risks associated with these transactions.

Borrowers having questions regarding the HLT definition should first refer these questions to their bankers. Bankers should then refer questions they cannot answer to the bank's primary federal regulator.

Purpose Test

. To become eligible for designation as an HLT, a financing transaction must involve the buyout, acquisition, or recapitalization of an existing business, domestic or foreign. This definition encompasses traditional leveraged buyouts, management buyouts, corporate mergers and acquisitions, and significant stock buybacks. Leveraged Employee Stock Option Plans (ESOPs) are also included when used to acquire or recapitalize an existing business.

For purposes of satisfying the HLT purpose test, a leveraged recapitalization involves a replacement of equity with debt on a company's balance sheet by means of a stock repurchase or dividend payout. Refinancing existing debt in a company is not deemed to be a leveraged recapitalization.

Exclusions from the HLT Definition:

Single Asset or Lease: This purchase test excludes the acquisition or recapitalization of a single asset or lease (for e.g., a large commercial building or an aircraft), or a shell company formed to hold a single asset or lease, from the HLT definition. Although such an acquisition may be highly-leveraged, the asset or lease, in and of itself, is not considered an ongoing business concern and, therefore, is not intended to be included in the HLT category. However, the acquisition or recapitalization of a leasing corporation which invests in fleets of equipment for leasing, or a building company which invests in real estate projects would satisfy the HLT purpose test.

De Minimis Test: Loans and exposures to any obligor in which the total financing package, including all obligations held by all participants, does not exceed $20 million, at the time of origination, may be excluded from HLT designation. Nonetheless, there may be some banking organizations that in the aggregate have significant exposure to transactions below the *de minimis* level. It is expected that those organizations would continue to monitor closely these transactions as part of their aggregate HLT exposures.

Historical Cutoff Date: An HLT transaction not included in the Shared National Credit Program, that meets or exceeds the $20 million test, may be excluded from HLT designation if it originated prior to January 1, 1987, the original terms and conditions of the credit are materially unchanged, the credit has not been criticized by examiners, and the financial condition of the debtor has not deteriorated.

Debtor-in-Possession Financings: Court-approved debtor-in-possession (or trustee-in-possession) financing for a business concern in Chapter 11 reorganization proceedings will generally be exempt from HLT designation. All prepetition debt of an HLT borrower and any post-reorganization debt (after a company emerges from chapter 11 bankruptcy) will continue to be included in HLT exposure until delisting occurs.

Leverage Tests

In addition to the purpose test, one of the following criteria must be met for the transaction to be considered an HLT:

(1) The transaction at least doubles the subject company's liabilities and results in a total liabilities to total assets (leverage) ratio higher than 50 percent.

Note: The purpose of this leverage test is to capture transactions in which a company must suddenly deal with a substantially higher debt burden. The greatest risk in a credit exposure is not necessarily the absolute level of debt but may be the impact on a company of significant new debt. A key HLT success factor is ability to handle a sudden, large increase in debt.

The "doubling of liabilities" is intended to capture those transactions where new debt is used to facilitate the buyout, acquisition, or recapitalization of a business. If the sum of the acquiring and acquired companies' liabilities would double as a result of the new debt taken on to effect the combination of the companies, then the transaction is considered an HLT, and all exposure to the company is designated an HLT. It is not intended to cover a doubling resulting from the simply addition of the existing liabilities of the two companies.

Any refinanced portion of old debt in a transaction should continue to be treated as old debt for purposes of applying this leverage test. Further, if there was no debt in either company prior to the transaction, then any new debt will result in a "doubling of liabilities."

In an acquisition involving one or more operating divisions of a company (as opposed to stand-alone subsidiaries), existing liabilities of the seller associated with specific operating assets being transferred in the transaction may be allocated to the resulting company for purposes of applying the "doubling of liabilities" test. The burden of proof is on the resulting company and its financial institution(s) to substantiate that the allocation of the seller's liabilities to the resulting company is appropriate.

When calculating a company's leverage for the purpose of this test, captive finance company subsidiaries and subsidiary depository institutions should be excluded from the consolidated organization.

(2) The transaction results in a total liabilities to total assets (leverage) ratio higher than 75 percent.

Note: When a company's leverage ratio exceeds 75 percent, the determination of whether exposure to the company is designated an HLT further depends on the composition of the company's total liabilities after the transaction. If a significant portion of the liabilities (generally 25 percent or more of total liabilities) derives from buyouts, acquisitions, or recapitalizations, either past or present, then all exposure to the company is designated an HLT. If, after the transaction, debt related to buyouts, acquisitions, or recapitalizations, either past or present, represents less than 25 percent of total liabilities, then the exposure to the company need not be designated an HLT.

Again, when calculating a company's leverage for the purpose of this test, captive finance company subsidiaries and subsidiary depository institutions should be excluded from the consolidated organization.

(3) The transaction is designated an HLT by a syndication agent.

In specific cases, the bank supervisory agencies may also designate a transaction as an HLT even if it does not meet the conditions outlined above. (It is anticipated that this would be done infrequently and only in material cases.)

Definition of the Leverage Ratio

The leverage ratio is total liabilities divided by total assets. Total assets of the resulting enterprise include intangible assets (such as goodwill). Total liabilities include all forms of debt (including any new debt taken on to facilitate the transaction) and claims, including all subordinated debt and non-perpetual preferred stock. Perpetual preferred stock is generally considered equity for purposes of calculating HLT leverage. However, exceptions could be made on a case-by-case basis if the stock has characteristics more akin to debt than equity.

Off-balance sheet exposure, including claims related to foreign exchange contracts, interest rate swaps, and other risk protection or cash management products may normally be excluded from HLT exposure as long as their credit equivalent exposure is small relative to other types of obligations. (It is expected, however, that internal management

information and control systems be in place to capture these exposures.)

If a parent company uses "double leverage" (that is, takes on debt and downstreams it as equity to a subsidiary) to assist a subsidiary in an HLT purpose-related transaction, then the debt at the parent company will be considered HLT purpose-related debt when calculating leverage for the company on an consolidated basis.

In an acquisition involving a pure assumption of debt with no new debt issued, the transaction is not designated an HLT unless the resulting company's aggregate outstanding HLT purpose-related debt (from all previous transactions) is significant (generally 25 percent or more of total liabilities) and the 75 percent leverage test is satisfied.

Consolidation of HLT Exposure

All credit extended to, or investments made in an HLT should be aggregated with any ordinary business loans to, or investments in, the same obligor.

If a company satisfies the HLT purpose and leverage tests on a consolidated basis, then a loan to any part of the organization is deemed to be an HLT. On the other hand, if only a subsidiary of a company satisfies the HLT tests, then the subsidiary could "stand alone" as an HLT; however, if the subsidiary's debt level is significant enough to cause the consolidated organization to meet HLT leverage criteria, then all debt of the entire organization is designated HLT.

Guarantees of Payment

If a parent company supplies an irrevocable, unconditional guarantee of payment on behalf of its subsidiary and the leverage of the consolidated organization does not meet HLT leverage criteria, then the subsidiary will generally not be designated an HLT. On the other hand, if the subsidiary's leverage is significant enough to cause the consolidated organization to meet HLT leverage criteria, then all debt of the entire organization is accorded HLT status. (NOTE: Third-party guarantees and guarantees by related subsidiaries of a company have no effect on the HLT designation. While these types of guarantees offer credit enhancement benefits which will be taken into consideration during the review of individual credits by examiners, they generally lack the stronger bonds of support inherent in the relationship between a parent and its subsidiary.)

When a foreign parent company provides the equivalent of an irrevocable and unconditional guarantee of payment on behalf of a subsidiary, the subsidiary's debt will normally not be designated as HLT debt as long as the consolidated organization does not meet HLT leverage criteria and the following two conditions are met:

(1) Written opinions from legal counsels in the country of origin and the United States are provided which state that the equivalent of a written guarantee of debt repayment exists when is irrevocable and unconditional; and

(2) The credit files in the U.S. banking organizations lending to the subsidiary contain consolidated financial statements for the foreign parent stated in U.S. dollars under U.S. accounting rules .

Agent and Lead Bank Responsibility

To ensure consistent application of the definition, the agent or lead bank is responsible for determining whether or not a transaction qualifies as an HLT. The agent or lead bank is charged with the timely notification to participants regarding the statis of the transaction and of any change in that status, i.e., designation as an HLT or delisting as an HLT.

The responsibility of the agent or lead bank to determine HLT status does not preclude a participant bank from designating a transaction as an HLT or relieve a participant from performing its own credit analysis. Examiners will review transaction for compliance with the HLT definition in the context of the Shared National Credit Program and during regular on-site examinations.

Delisting Criteria

HLT exposure of a given borrower may be removed from HLT status upon satisfying the general criteria and at least one of the specific criteria outlined below.

(a) *General Criteria*—For credits to become eligible for removal from HLT status, a company must demonstrate an ability to operate successfully as a highly-leveraged company over a period of time. Under normal circumstances, two years should be sufficient for the credit to show performance and to validate the appropriateness of projections. The banking organization should conduct a thorough review of the obligor to included, at a minimum, overall management performance against the business plan, cash flow coverages, operating margins, status of asset sales, if applicable, reduction in leverage, and industry risk.

(b) *Specific Criteria*—In addition to these general criteria, at least one of the following specific criteria must be met to become eligible for delisting:

(1) For exposures that were included because of the 75 percent leverage test, exposures are eligible for delisting from HLT status when leverage is reduced below 75 percent, and the company has demonstrated an ability to continue servicing debt satisfactorily without undue reliance on unplanned asset sales.

(2) If two years have passed since a company's most recent acquisition, buyout, or recapitalization satisfying the HLT purpose test, then the borrower's credits are eligible for delisting from HLT status if *all* debt satisfying the HLT purpose test is repaid in full, even if the borrower's total liabilities to total assets leverage ratio continues to exceed 75 percent. The refinancing of HLT purpose-related debt through additional borrowings does not constitute a repayment of HLT debt. Rather, the repayment of debt must occur from cash generated from operations, planned sales of assets, or a capital injection.

(3) For exposures that were included because of the 75 percent leverage test, a borrower's credits are eligible for delisting when the borrower satisfies the general performance criteria for delisting for at least 4 (four) consecutive years since its last buyout, acquisition, or recapitalization involving financing; the company has a positive net worth; and the company's leverage ratio does not significantly exceed its industry norm. Although this criteria does not require leverage to be reduced to less than 75 percent, the borrower must demonstrate an ability to continue servicing debt satisfactorily without undue reliance on unplanned asset sales.

(4) For those purposes that arose under the "doubling of liabilities to greater than 50 percent" leverage criteria, delisting is acceptable based upon the general criteria in (a) above and a demonstrated ability to satisfactorily continue to service the debt.

It is expected that banks will maintain records of delisted exposures and reasons for delisting. After delisting, any significant changes in the obligor's financial condition should cause the exposure to be reviewed for relisting. Records pertaining to delisting and relisting of HLTs will be reviewed by examiners in the context of the Shared National Credit Program and/or regular on-site examinations.

If the HLT is shared, the lead or agent bank should inform all participants and its principal regulator of the decision to delist or relist.

Dated: July 2, 1991.

Robert L. Clarke,

Comptroller of the Currency.

Dated: July 3, 1991.

Hoyle L. Robinson,

Executive Secretary of the Federal Deposit Insurance Corporation.

Dated: July 3, 1991.

William W. Wiles,

Secretary of the Board of Governors of the Federal Reserve System.

[FR Doc. 91-16342 Filed 7-9-91; 8:45 am]

BILLING CODE 4810-33-M
BILLING CODE 6714-01-M
BILLING CODE 6210-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 91-58]

Approval of Quantum Marine, Inc., as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Quantum Marine, Inc., as a commercial gauger.

SUMMARY: Quantum Marine, Inc., of Aston, Pennsylvania recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under part 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Quantum Marine, Inc., meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with part 151.13(f) of the Customs Regulations,

Quantum Marine, Inc., 2 New Road, suite 201, Aston, Pennsylvania 19014, is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, DC 20229 (202-566-2446).

Dated: July 3, 1991.

Lyal V.S. Hood,

Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 91-16404 Filed 7-9-91; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 132
Wednesday, July 10, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., July 26, 1991
9:00 a.m. to 5:00 p.m., July 27, 1991

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

Discussion of grant awards, the FY 1992 Grant Guideline, and an evaluation of the Institute's impact on the State courts.

Portions Closed to the Public

Discussion of internal personnel issues.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684-6100.

David I. Tevelin,

Executive Director.

[FR Doc. 91-16574 Filed 7-8-91; 3:44 pm]

BILLING CODE 6820-SC-M

Federal Register

Wednesday
July 10, 1991

Part II

Nuclear Regulatory Commission

10 CFR Parts 52, 71, 170, and 171
Revision of Fee Schedules; 100 Percent Fee Recovery; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 52, 71, 170, and 171

RIN: 3150-AD87

Revision of Fee Schedules; 100% Fee Recovery

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the regulations governing the licensing, inspection, and annual fees charged to its licensees. The amendments are necessary to implement Public Law 101-508, passed by the Congress on November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority ($465 million) in Fiscal Year (FY) 1991, and the four succeeding years. This final rule affects all applicants, licensees, and holders of certificates of compliance, registrations of sealed sources and devices, approvals of quality assurance (QA) programs, and other approvals. The final rule increases fees substantially for those entities currently subject to fees. Other entities previously exempt from fees become subject to the fees in the final rule.

EFFECTIVE DATES: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-492-4301.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Analysis of Legislation.
III. Responses to Comments.
IV. Final Action—Changes Included in Final Rule.
V. Section-by-Section Analysis.
VI. Environmental Impact: Categorical Exclusion.
VII. Paperwork Reduction Act Statement.
VIII. Regulatory Analysis.
IX. Regulatory Flexibility Analysis.
X. Backfit Analysis.

I. Background

Currently, the Commission collects fees under 10 CFR parts 170 and 171. 10 CFR part 170, "Fees for Facilities and Materials Licenses and Other Regulatory Services" implements Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701). The license and inspection fees assessed under 10 CFR part 170 recover the costs to the NRC of providing individually identifiable services to specific applicants for, and holders of, NRC licenses and approvals. For example, fees are charged under 10 CFR part 170 for the NRC reviews of applications for new licenses, reviews of renewals and amendments to existing licenses, and inspections of applicants' and licensees' facilities. The fee schedules contained in 10 CFR part 170 were last revised on May 23, 1990 (55 FR 21173) (effective July 2, 1990). These fees were based on the FY 1990 budget.

10 CFR part 171, "Annual Fees for Power Reactor Operating Licenses", initially established in FY 1987, implements section 3201 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) by charging an annual fee to NRC operating power reactor licensees (55 FR 7610; March 2, 1990). The annual fees recover NRC budgeted costs for generic regulatory activities relating to these licensees. The amount collected in FY 1990 from annual fees, when added to the amounts recovered under 10 CFR part 170 and the Nuclear Waste Fund (NWF), was approximately 45 percent of the NRC budget. For FY 1991, the previous Public Law required the Commission to recover $157 million or 33 percent of its budget. On this basis, the NRC published the FY 1991 annual fees for operating power reactors based on 33 percent of the President's budget of $475 million on August 17, 1990 (55 FR 33789).

The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), signed into law on November 5, 1990, requires that the NRC recover 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing license, inspection, and annual fees.

On April 12, 1991 (56 FR 14870-14896), the Commission published in the **Federal Register** a notice of proposed rulemaking that would amend the provisions of 10 CFR parts 170 and 171. This action was necessary for the Commission to comply with Public Law 101-508 and to more completely recover costs incurred by the Commission in providing services to identifiable recipients. The notice of proposed rulemaking invited interested persons to submit written comments for consideration in connection with the proposed amendments on or before May 13, 1991. In addition, the Commission's staff has been available to answer questions concerning the proposed rulemaking. As such, the NRC responded to numerous phone calls and held several meetings to respond to questions regarding the proposed fees. Summaries of these meetings have been placed in the Public Document Room. The Commission placed a copy of the workpapers relating to the proposed rule in its Public Document Room at 2120 L Street, NW., Washington, DC in the lower level of the Gelman Building. Workpapers relating to this final rule will also be placed in the Public Document Room.

II. Analysis of Legislation

Public Law 101-508, title VI, subtitle B, section 6101, states the new requirements for user fees and annual charges, which are summarized as follows in the Conference Report to the legislation, (101st Cong., 2d Sess., 136 Cong. Rec. H. 12692-93 (daily ed. October 26, 1990)):

Subsection (a)(1) requires the NRC to collect fees and annual charges.

Subsection (a)(2) provides that the first assessment made under this authority shall be made no later than September 30, 1991.

Subsection (a)(3) provides that the last assessment of annual charges made under this authority shall be made no later than September 30, 1995.

Subsection (b) provides that the NRC shall continue to collect fees under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). These fees are intended to recover the Commission's cost of providing any service or thing of value to a person regulated by the NRC.

Subsection (c) requires the NRC to collect, in addition to the Independent Offices Appropriation Act fees under subsection (b), an annual charge.

Subsection (c)(1) authorizes the NRC to impose an annual charge on any licensee of the NRC.

Subsection (c)(2) provides that the aggregate amount of annual charges shall, when added to the Independent Offices Appropriation Act fees collected under subsection (b), equal approximately 100 percent of the NRC's total budget authority for each fiscal year, less any amount appropriated to the NRC from the Nuclear Waste Fund.

Subsection (c)(3) directs the NRC to establish a schedule of annual charges that fairly and equitably allocates the aggregate amount of charges among licensees and, to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees. The schedule may assess different annual charges for different licensees or classes of licensees based on the allocation of the NRC's resources among licensees or classes of licensees, so that the licensees who require the greatest expenditures of the NRC's resources will pay the greatest annual charge.

Subsection (d) defines the Nuclear Waste Fund established by section 302(c) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(c).

Subsection (e) amends section 7601 of the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272) to preserve existing authority for the NRC to collect user fees approximating 33 percent of the agency's budget. Following fiscal year 1995, annual charges will be assessed under section 7601

of the 1985 act instead of subsection (c) of the conference agreement.

In the Conference Report, the Congress suggested guidelines that NRC should follow in calculating the annual fee to be assessed. The conferees recognized in directing the Commission to collect the annual fees that, "Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties" and that Congress must provide the agency "intelligible guidelines" for making these assessments. 136 Cong. Rec. at H12692, citing *Skinner* v. *Mid-America Pipeline Co.*, 109 S. Ct. 1726, 1734 (1989). The Conferees stated their belief that "the conference agreement meets these requirements." Id. at H12692. The specific guidelines are as follows:

First, the appropriations received by the NRC from the NWF established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) for licensing the DOE's nuclear waste management program are not to be recovered by the annual charges and should be subtracted from the amount of the budget authority.

Second, the amount recovered through annual charges is to be reduced further by the amount the NRC receives through fees assessed on licensees under the IOAA through part 170 of the Commission's regulations. The part 170 fees are intended to recover the costs to the NRC of providing individually identifiable services to applicants and holders of NRC licenses. Part 170 fees are not intended to recover the cost of generic activities that benefit licensees generally. The Committee expects the NRC to continue to assess fees under the IOAA so that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services the licensee or applicant receives.

Third, Public Law 101–508 provides, and the Conference Agreement reiterates, that the balance (after subtracting the amounts estimated to be received from the NWF and part 170) of the NRC's annual budget is to be recovered from the NRC's licensees through annual charges. The annual charge should be assessed under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual charges. The schedules of annual charges, which are to be established by rule, should "fairly and equitably" allocate the total amount of the charges to be recovered from the NRC's licensees and, to the "maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services" to the licensees. 136 Cong. Rec. at H12692. The conferees recognized that a substantial portion of the NRC's annual expenses, while not attributable to individual licensees and thus not recoverable under the IOAA, are attributable to classes of licensees. Thus, the conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to that class. The conferees recognized that certain expenses cannot be attributed either to an individual or to classes of NRC licensees. The conferees intend that the NRC fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from those licensees whom the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. 136 Cong Rec. at H12692, 3.

Fourth, the conferees note that the U.S. Court of Appeals for the District of Columbia Circuit, in affirming NRC's part 171 fee schedule, concluded that the agency "did not abuse its discretion by failing to impose the annual fee on all licensees," *Florida Power & Light Co.* v. *NRC*, 846 F.2d 765, 770 (D.C. Cir. 1988), *cert denied*, 109 S. Ct. 1952 (1989)).

Finally, the conferees noted that, under its existing rules, the NRC does not offset amounts paid by licensees as fines and penalties (including interest penalties) against the amount of annual charges to be collected. In addition, the NRC does not seek to recover through the annual charge amounts received from participants in the cooperative nuclear safety research program, the material and information access authorization programs (including criminal history checks under section 149 of the Atomic Energy Act of 1954, 42 U.S.C. 2169), or amounts received for services rendered to foreign governments and international organizations. "The conference agreement does not change these policies. Fines and penalties are assessed because of a failure of a licensee to comply with NRC standards and requirements. The purpose of the fine or penalty would be defeated if their assessment would result in a lowering of the offender's obligation to pay annual charges. Receipts from cooperative, international, and access authorization programs are collected from the entities benefitting from the particular program and are retained and used by the NRC for that program. Inclusion of the amount of these funds in the total amount recovered through the annual charge would result in double payment." 136 Cong. Rec. at H12693

III. Responses to Comments

Three hundred thirty-four (334) public comments were received by the close of the comment period on May 13, 1991. The Commission has considered an additional 114 comments which were received by close of business on May 17, 1991, for a total of 448 public comments.

Of the 448 comments received, 413 were from persons concerned with other than power reactors (including States and local government agencies) and 35 were from utility licensees, and their representatives including owners groups concerned about fees for part 50 facilities. Thirteen letters were also received from other Federal agencies. Copies of all comment letters are available at the Public Document Room.

Many of the comment letters raised similar questions. These comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments have been grouped into three major areas—legal, policy, and specific fee issues.

A. Legal Issues

Several of the commenters raised questions concerning NRC's legal interpretation of the Public Law. These comments are addressed first because their resolution establishes the framework within which to address subsequent policy and specific fee issues raised by the comments.

1. Assessment and Collection of Annual Fees

Comment. Several commenters raised the question as to whether the Public Law requires the Commission to assess and collect fees by September 30, 1991, as indicated in the proposed rule, or to only assess fees by September 30, 1991, with licensees having the option of paying some of the revised fees after the end of FY 1991.

Commenters cite title VI, subtitle B, section 6101, subsection (a)(2), as providing that the first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991. This provision, commenters argue, means that the NRC must determine the fee amounts and bill the licensees by September 30, 1991, but it does not mean that the fees must be collected by that date. The commenters indicate that collection by September 30 would not be possible if the Commission waited until that date to assess the charge, as the law would allow. Most commenters

indicated that the Commission should bill licensees for the revised annual fees by the end of FY 1991, but defer the collection of the fees for a reasonable amount of time. They argue further that the Energy and Water Development Appropriations Act of 1991, passed a week after the Omnibus Budget Reconciliation of 1990 (OBRA), indicates that revenues from licensing fees amounting to only $153.5 million or 33% of the budget need be recovered (collected) by the NRC in FY 1991.

Response. The Commission believes that OBRA is the controlling legislation for recovery of 100 percent of the budget authority and believes that the correct interpretation of the law and the intent of Congress are that it directed the NRC to both assess and collect fees that approximate 100 percent of the budget authority for FY 1991–1995. Section (c)(2) of the law reads that "the aggregate amount of the annual charge *collected* (emphasis added) from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected * * *". Section (3) goes on to indicate that "the Commission shall establish by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees." The Commission interprets this language as requiring in FY 1991:

(1) The allocation of 100 percent of the NRC budget authority among licensees;

(2) The establishment of the fees by rule; and

(3) The collection of 100 percent of the budget authority.

However, even if it were not mandated to do so, the Commission believes as a matter of policy that it should collect FY 1991 annual charges by the end of FY 1991. A primary purpose of the 1990 OBRA legislation, of which the NRC user fee provision is a part, is to reduce the Federal budget deficit for FY 1991. This objective can only be achieved by the collection of fees and charges by the end of that fiscal year. Additionally, by requiring payments to be made this fiscal year, the Commission would be following both normal and prudent billing practice, as well as continuing its policy of previous years of requiring payment of part 171 annual charges by the end of the fiscal year in question.

The Commission recognizes that the timing of the FY 1991 annual fee bills is not ideal, but as noted, the NRC must collect the FY 1991 budget in FY 1991. To minimize the financial impact, however, the Commission has decided that the first quarter FY 1992 bills will not be due until after the beginning of the second quarter of FY 1992.

2. Collect 100 Percent of Budget Authority

Comment. Several commenters indicated that the language in title VI, subtitle B, section 6101, subsection (c)(2) of the law which states that the "annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority" permits the Commission to explicitly exclude costs other than those recovered from the Nuclear Waste Fund from fee assessment.

Commenters from the power reactor industry questioned certain costs allocated to them based on Commission policy decisions. They indicated that some of these costs should not be charged and that the law, by its use of the words "approximately 100 percent" provides discretion for the Commission to exclude some costs from fee assessment (e.g., costs not attributable to a licensee, costs resulting from exempting nonprofit educational institutions, etc.).

Response. The Commission interprets the words "approximately 100 percent" as meaning that the Commission should promulgate a rule that identifies and allocates as close to 100 percent of its budget authority to the various classes of NRC licensees as is practical. This interpretation is supported by the Conference Report which states that "the conferees recognize that there are expenses that cannot be attributed either to an individual licensee or a class of licensees. The conferees intend the NRC to fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributable to individual licensees or classes of licensees." Thus, the Commission concludes it was Congress' intent that the Commission allocate 100 percent of its budget authority for fee assessment, and that the term "approximately 100%" refers only to the inherent uncertainties in estimating and collecting the fees. These uncertainties may result in collecting less than the budgeted amount in which case NRC would not be required to collect additional fees; or collection of slightly more than the budget, in which case NRC would not be required to make refunds.

3. Assessment of Fees to All Classes of Licensees

Comment. Several commenters stated that the NRC is required to assess license fees and/or annual fees on all licensees where legally permissible in order to recover 100 percent of the budget authority. Commenters indicated that as a matter of consistency the NRC should recover its costs from any person or organization that receives NRC services and, therefore, there should be no exemption for nonprofit educational institutions, for example. In support of its argument, one commenter cites the statement in the Public Law that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value." Others commented that the continued exemption for nonprofit educational institutions "violates the Congressional directive to recover costs of agency programs from those whom the programs benefit."

Response. The Commission concludes that it is not required to assess license fees and annual fees to all classes of licensees. For part 170 fees, for example, OMB Circular No. A–25, the implementing governmentwide policy guidance for the IOAA, indicates in item 5.(b).(3)., that an agency may make exceptions to the general policy, and not assess fees for recipients engaged in a nonprofit activity designed for the public safety, health and welfare. Similarly, item 5.(b).(4). indicates that an exception may be made from the payment of the full fee by a State, local government or non-profit group when it would not be in the interest of the program.

For part 171 annual fees, the Public Law, in defining persons subject to the annual charges, states that "any licensee of the Commission *may* (emphasis added) be required to pay * * * an annual charge." Therefore, the Commission has discretion with regard to whom to assess license fees under part 170 and annual fees under part 171.

4. Annual Fees for Federal Agencies

Comment. Several Federal agencies licensed by the NRC commented that they should not be assessed annual fees under part 171 simply because they are NRC licensees. These agencies believe that to assess these fees violates the IOAA, and does not further the Congressional intent of NRC user fee legislation, which is to reduce the Federal budget deficit.

Response. In the supplementary information to the proposed rule, the Commission indicated that it is precluded under the IOAA from charging Federal agencies for "identifiable services rendered" under part 170. Public Law 101–508, the authority for the part 171 annual fees, is silent on the subject of charging Federal agencies. However, it does not bar such action, and allows collection of fees

from "any person" and "all licensees." Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, section 6101, 104 Stat. 1388-298,299 (1990). The Public Law, in defining persons subject to the annual charge, states that "any licensee of the Commission may be required to pay * * * an annual charge." The Commission further notes that "persons" as defined in section 11s. of the Atomic Energy Act, includes Federal agencies (except for portions of the Department of Energy) and all licensees are "persons". Given this Congressional language, the Commission believes it legally permissible to consider Federal agencies with an NRC license as falling into the above categories, and is assessing them an annual fee accordingly.

5. Export Licensing Fees

Comment. A few commenters suggested that charging a fee for issuing export and import licenses, as proposed in Category K of § 170.21, and Category 15 of § 170.31, is a tax in violation of Article I, section 9 of the U.S. Constitution. The commenters also stated that according to an NRC publication, the reason for such licenses is to "enhance U.S. national security by preventing" nuclear proliferation. Therefore, because the service provides benefits for the U.S. Government and its citizens, it is improper to bill those seeking licenses.

Response. The Commission is following its mandate from Congress to charge based on "a reasonable relationship to the cost of * * * services * * *" The fees in question here are directly related to the cost of issuing export and import licenses, and therefore are not a tax or duty. The resulting charge therefore does not violate Article I, section 9 of the U.S. Constitution. Further, there is no compelling justification for not charging these entities fees.

As for the claimed improper purpose, the courts have held that the NRC may assess fees under part 170 for services that mutually benefit the recipient and the public. Prorating of costs on the basis of benefit to the public is not required. *Mississippi Power & Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (1979), *cert. denied,* 444 U.S. 1102 (1980).

One commenter claimed that no other U.S. agency charges for export licenses. This is incorrect. The Fish and Wildlife Service within the U.S. Department of the Interior charges a fee for wildlife export/import licenses. See 50 CFR 13.11(d) (1990).

6. Publish the Final Rule as an Immediately Effective Rule

Comment. Several commenters questioned the intent of the NRC to publish the final rule as effective upon publication without the normal 30 day period between publication and effective date. Some commenters believed that the Commission must offer a period of time after publication of the final rule to allow licensees to drop out of the licensed activity and to terminate their licenses to avoid payment of the new fees. An immediately effective final rule would not provide such an opportunity.

Response. The Commission has adopted the recommendation of numerous commenters and will promulgate parts 170 and 171 with an effective date 30 days after publication of the rule in the **Federal Register.** However, in order to effectuate 100% recovery of its budget authority, the Commission will send out the part 171 bills upon publication of the rule in the **Federal Register.** The bills would become due and payable on the effective date of the rule. This approach is authorized by NRC's debt collection regulations in 10 CFR part 15. Licensees and holders of certificates, registrations, and approvals are expected to pay these bills promptly. In order to avoid interest payments and penalties the bill must be paid within 30 days from the effective date of the rule.

Licensees, and holders of certificates, registrations, and approvals who wish to apply to the Commission for an exemption from all or part of their Fiscal Year 1991 part 171 annual fees must ensure that exemption requests, submitted pursuant to § 171.11, are received by the Commission on or before the effective date of the rule. With respect to timely filed exemption requests before the effective date of the rule, the Commission will act on those requests and will inform the requestor whether the sums will still be due during the pendency of the review of the request. No such assurance can be provided for exemption requests filed after the effective date of rule. Exemption requests or any requests to clarify the bill will not, per se, extend the interest-free period for payment of a bill. As stated above, the bills are due and payable on the effective date of the rule. Therefore, only payment will ensure avoidance of interest, administrative, and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded.

The Commission wishes to emphasize that licensees, and holders of certificates, registrations, and approvals who wish to relinquish their license(s), certificate(s), or registration(s) or obtain a Possession Only License (POL), and who are capable of permanently ceasing licensed activities entirely by September 30, 1991, must, within the 30-day period before the effective date of the rule, notify the Commission, in writing, in accordance with 10 CFR 30.36, 40.42, 50.82, and 70.38, as appropriate. Licensees and holders of certificates, registrations and approvals must promptly comply with the conditions for license termination in those regulations in order to be considered by the Commission for a waiver of the FY 1991 annual fee.

7. Publish Final Rule as an Interim Rule

Comment. A few commenters suggested that the Commission publish the final rule as an "interim" rule, and schedule a further rulemaking to address inequities revealed during implementation and to allow the NRC to seek clarification or modification of its authority from Congress, if necessary.

Response. The Commission does not see the utility of publishing the final rule as an "interim" rule. In any case, any future changes in the rule, whether or not called "interim" would have to be effected through notice and comment rulemaking. Further, regardless of how a rule is characterized, it is the Commission's practice to monitor the implementation of its rules, and to amend them as dictated by experience.

B. Major Policy Issues

The commenters raised three major policy issues related to the proposed fee rule. As with the legal issues, the resolution of these policy issues helped frame the resolution of subsequent specific fee issues.

1. Assessing Costs Not Attributable to an NRC Licensee

Comment. Many comments were received from utilities and their representatives indicating that the NRC has not followed Congress' mandate by allocating certain costs to power reactors that these licensees contend are not attributable to them (e.g., uranium enrichment, DOD/DOE projects, international programs, etc.). These costs, they point out, should either be assessed as broadly as practicable in order to minimize the burden of the costs on a licensee or class of licensee or should be treated as activities in the national interest (e.g., international programs) and not charged at all. They also suggested that some costs should be assessed to applicants for licenses (e.g., uranium enrichment generic costs).

Response. As stated in the discussion of the legal issues, the Commission must collect approximately 100 percent of its budget in fees, even though in some instances certain activities are not attributable to an existing NRC licensee. These latter costs must be assessed upon someone. It is clear that under the legislation the NRC is only permitted to assess these costs to NRC licensees. It may not assess annual fees upon license applicants. Therefore, NRC must assess these costs on its existing licensees. As explained in the proposed rule, the Commission believes that it is appropriate to assess these costs based on the Conference Report guidance that the costs be "recovered from such licensees as the Commission in its discretion determines can fairly, equitably and practicably contribute to their payment." The Commission has determined that operating power reactor licensees can more equitably and practicably pay these costs than other NRC licensees, particularly in view of the substantial new annual fees being assessed to other licensees. The overwhelming portion of the Commission's budget is devoted to the regulation of power reactors and, therefore, it is only just that these entities pay for all but a small portion of the Commission's budget. Therefore, the Commission is assessing the $15.7 million in budgeted costs for activities not attributable to an existing NRC licensee or class of licensee to operating power reactors as indicated in the proposed rule.

2. Consideration of Non-Safety Impacts in Assessing Fees

Comment. Most of the commenters indicated that the proposed rule would result in some type of impact on the licensee. For example, most of the over 200 comments from medical licensees expressed the opinion that the proposed fees, particularly the annual fees, would be a "death warrant" to nuclear medicine departments, would adversely affect patients' medical costs, and would result in reduced health care. Many medical licensees commented that small health care facilities would have difficulty continuing to operate if the "exorbitant" annual fees are assessed, and that the increased fees seem contrary to the process of cost containment and regulatory constraint of compensation for medical care.

Approximately 100 comments were received from well loggers, radiographers, and gauge users indicating that the annual fees would create severe hardships for the companies, and would prohibit them from providing well logging, radiography, or gauge services. Many of the commenters suggested they will either have to terminate their license or move to an Agreement State which does not charge fees as high as those of NRC. Other commenters argued that they are small businesses with a few employees operating in a recessionary economy and competing against worldwide operations and huge foreign-owned companies. Many point out it will be impossible for their companies to pass on the proposed fee increases to clients and remain competitive in a small and severely depressed market.

The uranium recovery licensees stated that the proposed fees would have a significant adverse economic impact and will only further weaken the already non-viable domestic uranium mining and milling industry. Another commenter stated that the annual fees will dictate abandonment and decommissioning of uranium mills.

Fuel facilities licensees noted that the proposed fees would reduce the ability of U.S. based nuclear companies to compete in the world market and increase the potential for loss of U.S. jobs and economic dislocation. One commenter noted that the annual fee could force it to cease UF_6 conversion activities which could result in impaired national security.

The transportation class of licensees indicated that if the fees forced termination of the licenses, or Certificates of Compliance, a limited number of casks would be available for transport of spent fuel in the event of a reactor shutdown as well as for DOE and defense contracts. They noted that this could adversely affect safety and national security. The transportation licensees also indicated that these fees could become a barrier to free trade and competition because smaller vendors, with limited resources, would not be able to maintain a competitive position. Another commenter noted that the fees are expected to become a significant constraint on the development of newer and safer transportation and spent fuel storage casks.

Power reactor licensees stated the fees would have major impacts on the economic health of the licensees and the nature of NRC/licensee interaction, possibly to the detriment of the public interest, if not public health and safety. Others noted that the fees could divert available funds from operations and maintenance resulting in deferring plant improvements. Nonpower reactor licensees noted that the imposition of the annual fee would likely cause the shutdown of some nonpower reactors.

Response. These comments regarding impacts on the nuclear industry have been carefully considered. The Commission recognizes that there will be adverse impacts from implementing the legislation. However, to eliminate the adverse effects, the annual fees would have to be eliminated or reduced. Because the Public Law requires the NRC to assess and collect approximately 100 percent of its budget authority, a reduction in the fees assessed for one class of licensee would require a corresponding increase in the fees assessed for another class. Therefore, the impacts noted cannot be eliminated without creating adverse effects for other licensees. For this reason, consideration has been given only to the effects that NRC is required to consider by law (i.e., the Atomic Energy Act, the Energy Reorganization Act, and the Regulatory Flexibility Act).

With regard to the health and safety responsibility and national defense requirements of the Atomic Energy Act and the Energy Reorganization Act, there is insufficient evidence supporting the commenters' claims of significant adverse effects. Therefore, no modification to the fees is included as a result of unsupported claims of safety impacts. However, implementation of the rule will be monitored and action taken as necessary if there are clear health and safety problems that arise.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires consideration of the effect of regulations on small entities. These considerations must be documented and made available to the public in a Regulatory Flexibility Analysis. This analysis is discussed in the next issue.

3. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that, consistent with the objectives of the rule and applicable statutes, the NRC consider the impact on small entities. The applicable statute in this case, Public Law 101–508, has a mandate of recovering 100 percent of the NRC's budget authority through fees. The Conference Report accompanying the legislation indicates a goal of assessing costs attributable to a class of licensees to that class. The Regulatory Flexibility Act requires that the NRC consider alternatives to minimize the economic impact of its regulations on small entities. These two laws are inherently in conflict if taken literally, in that assessing costs attributable to the materials class of licensees to that class of licensees will cause a significant impact on a substantial number of small entities. However, as indicated in the

response to the legal questions, NRC must assess all of its costs, but has discretion with regard to which licensees shall be assessed and the amounts charged to and within each class of licensee. Similarly, the Commission is not required to eliminate or even reduce the impact on small business, but is required to evaluate these impacts and explain its decision.

The Regulatory Flexibility Analysis is included in this final rule as appendix A to this document. This analysis evaluates the impact on small entities and, based on the comments received, concludes that there will be a significant impact on a substantial number of small entities. Alternatives to minimize the impacts were also evaluated. Given the conflicting goals of Public Law 101-508 and the Regulatory Flexibility Act, the Commission has determined that the impact on small entities be reduced, not necessarily eliminated, by establishing a maximum annual fee of $1,800 per fee category for small entities. For each category, a materials licensee would pay the annual fee (base annual fee plus the surcharge) or $1,800, whichever is less. To pay a reduced fee, a licensee must certify, using NRC Form 526 which will be enclosed with the bill, that it meets NRC's size standards for a small entity. The size standards were defined in the **Federal Register** on December 9, 1985 (50 FR 50241). Licensees that do not meet these criteria for small entities would be assessed the full annual fees established for the various classes of licensees in the final rule. The cost that would not be collected from the small entities, approximately $4.9 million, will be allocated as a surcharge to large entities licensed by the NRC as follows: $4.3 million to power reactor licensees and $.6 million to large entities licensed under the materials program. This allocation is based on the percent of the budget attributable to each class of licensees.

C. Specific Fee Issues—Part 170

1. Assessment of Fees to Nonprofit Educational Institutions

Comment. The Commission invited public comment on this issue. Many public comments were received on whether or not to continue the exemption from fees for nonprofit educational institutions. A large majority of the comments were received from nonprofit educational institutions supporting the continuation of the current exemption in § 170.11(a)(4). These commenters indicated that nonprofit educational institutions have limited abilities to recover the increased regulatory costs. They stated that the exemption has benefitted the public over the years by facilitating academic research and educational use of licensed materials, work that both furthers understanding of important research questions and provides training in nuclear science. Others commented that nonprofit educational institutions are perhaps the least able to contribute to the payment of fees.

Comments were also received indicating that, as a matter of consistency, the NRC should recover its costs from any person or organization which receives NRC services, including nonprofit educational institutions. These commenters claimed that the Commission no longer has the discretion to exempt certain classes of licensees because the Public Law, citing IOAA, directs that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing such service or thing of value." Commenters pointed out that, if such an exemption were authorized, it would be more fair and equitable to allocate the costs among all licensees, not just operating power reactors, because all licensees, as well as the NRC, benefit from the training provided by nonprofit educational institutions to future engineers and other professionals in nuclear related fields. Another commenter noted that while voluntary charitable contributions to educational institutions are desirable, involuntary charitable assessments to operating power reactors are inconsistent with Congressional directives. They also suggested that if the Commission exempts these institutions from fees, then it should remove their costs ($2.2 million) from the license fee base and not recover them. Other commenters indicated that for equity and fairness, nonprofit educational institutions should be required to pay the same fees as those being imposed on similar facilities operated by a for-profit corporation or nonprofit organizations that are not educational.

Response. As discussed in the evaluation of legal issues, the Commission must assess these costs but can decide whether to assess them to nonprofit educational licensees or to other licensees. The Commission believes that educational research provides an important benefit to the nuclear industry and the public at large and should not be discouraged. These nonprofit institutions have a limited ability to pass these costs on to others. Because the public comments do not provide a persuasive reason to change the proposed rule, the Commission will continue the exemption in § 170.11(a)(4) for nonprofit educational institutions and allocate these costs to operating power reactors.

2. Assessment of Fees for Standardized Reactor Design Reviews

Comment. Although the Commission did not propose changing its current policy of deferring payment of fees associated with standardized reactor design reviews, the Commission requested public comments on this issue. Numerous comments were received. The vendors who submit the designs for NRC review, NUMARC, and utilities endorsing NUMARC's comments, support the present policy of deferring the costs until the design is referenced in a license application or, if not referenced, the total accrued costs would be paid in full within a maximum of 15 years. They commented that, given the commercial industry's commitment to public health and safety and the benefits to be realized by the use of the standardized designs, it is reasonable to defer the costs and allocate them to power reactors. They suggest, however, that the deferred costs be paid in future dollars in order that "benefits received at some future time from a reduced annual charge on power reactors are equivalent to the 1991 amount paid." Second, a separate mechanism was suggested in order to repay those licensees who pay the increased annual fees now but may not benefit from a reduced annual fee at a later time because they are no longer subject to the annual fee. In addition, they suggest that those foreign companies seeking approval or certification of designs should be charged for the review costs as the costs are incurred by the Commission.

Other utilities and their representatives, on the other hand, objected to the current cost deferral policy as being neither fair nor equitable. These commenters indicated that such costs should not be recovered from power reactors, but from the vendors because these activities have no benefit to an already licensed plant. They argued that the Public Law does not grant the NRC the discretion to defer the costs. Therefore, since the costs are to be recovered these commenters stated that they should be charged as part 170 fees to the vendors seeking approval of the standardized designs. Others indicated that charging the costs to U.S. operating power reactors ignores the fact that the vendors will be marketing and selling the designs outside the U.S. They suggested that these other countries be solicited for a

portion of the funding. Although the U.S. nuclear power industry or individual utilities may choose to support the new designs, commenters indicate that the costs for the standardized design review should be charged directly to the individual nuclear steam supply vendors. One utility commented that because, to its knowledge, no new plants have been ordered or planned, collecting these costs from currently operating power reactors is not appropriate. Another utility indicated that licensees should not become "lending institutions for other organizations who receive immediate benefit." Other commenters indicated that there are no assurances that current operating reactors forced to bear the costs will still be licensed 15 years hence to receive the benefit of reduced costs at that time or that the vendors themselves will be in business or available to pay the fees in the future.

Response. Based on the comments received, the fact that NRC is not altering fees to reduce the impact for other larger entities, and the fact that applicants for standardized reactor design reviews are large companies capable of paying for the services rendered by the NRC, the Commission is changing the current policy of deferring the costs for standardized reactor design reviews. The Commission has decided that the cost of these reviews, whether from domestic or foreign applicants, should be assessed under part 170 to those filing an application with the NRC for approval or certification of a standardized design. Budgeted costs for advanced reactor research, review of Electric Power Research Institute (EPRI) advanced reactor criteria, generic rulemaking and guidance (e.g., 10 CFR part 52 and Regulatory Guides) for standard plants and contested hearings will continue to be included in the operating power reactor annual fee.

Review costs incurred under the present deferral policy, up to the effective date of this final rule will continue to be deferred. Because the rule will not become effective until late FY 1991, costs budgeted during FY 1991 will be assessed to operating power reactors in order to recover approximately 100 percent of the FY 1991 budget authority. Parts 52 and 170 have been modified in the final rule to reflect this change in fee policy.

3. Assessment of Fees Based on Hourly Rate

Comment. Commenters, while having no problem with the method of calculation of the hourly rate, questioned the inclusion or exclusion of some cost elements in the overhead as part of the hourly rate. For example, commenters questioned the inclusion of Agreement State costs because the Agreement State program supports only materials licenses and the liaison activities with Agreement States provide no benefit to power reactors. Commenters indicated that ACRS costs relating to the review of advanced reactor designs, are also included in the overhead and should be assessed to vendors seeking review of an advanced design. Commenters stated that a unique hourly rate should be established for each class of licensee because not all overhead costs are applicable to each class of licensee. The commenters cite the ACRS cost as an example of cost included in the overhead that is not applicable to uranium producers and other non-reactor licensees. Utilities commented that it was unclear whether research grants to educational institutions and the Small Business Innovation Research Program (SBIR) should be included in overhead as opposed to charging these costs to operating reactors in the annual fee as in the proposed rule.

Response. The Commission has carefully considered the NRC costs classified as overhead and General and Administrative (G&A) and believes that the proposed allocations are appropriate from a practical point of view. Although any licensee may argue that there are isolated costs not applicable during a particular year, the Commission believes that when all costs are considered, the overhead and G&A cost allocation is appropriate and represents a practical and equitable way of allocating these costs to NRC licensees and applicants. With regard to the grants and SBIR programs, these programs are related to the NRC regulatory program with most of the activities being attributable to operating power reactors.

4. Assessing Fees to Agreement State Licensees Working in Non-Agreement States Under a Reciprocity General License

Comment. Many materials licensee commenters indicated that the annual fee for NRC materials licensees would result in an unfair advantage for their competitors who hold Agreement State licenses. The commenters pointed out that Agreement State licensees could operate in non-Agreement states without being assessed an annual fee by NRC. However, NRC licensees are charged a reciprocity fee by many Agreement States to operate in those states.

Response. Based on the comments received, the Commission has decided to assess fees to those Agreement State licensees working in States under NRC jurisdiction under the reciprocity provisions of § 150.20 for the services provided by the Commission. Specific services identified by the Commission which benefit the individual Agreement State licensees include review of their registrations required by the general license under Part 150 and inspection of the reciprocity activities. Accordingly, an application fee of $600 will be assessed for each application filed for review in addition to the inspection fee originally proposed. It is noted that some Agreement States charge similar fees. Section 170.31 has been revised to add fee Category 16 to cover the reciprocity application fee. The application fee will be due at the time the applicant files Form 241 with the Commission and payment shall accompany the application. The inspection fee, which will be based on the appropriate fee category for the activities authorized, will be due upon notification by the Commission.

5. Fees for Topical Report Reviews

Comment. Several comments were received opposing the elimination of the ceiling for topical report reviews. The commenters indicated that, while the action is consistent with Congressional guidance that applicants pay for the services provided, deleting the ceiling will introduce an element of uncertainty and thereby tend to impede utilities working together to initiate activities with plant safety benefits. Commenters indicated that applicants should be provided with assurances of predictable schedules and with an estimate of the cost upon submittal of the topical report because the cost of an activity is a key element in determining whether a project is worthwhile. The commenters also noted that removal of the cap presents budgeting problems which may (1) affect their ability to address future generic issues and (2) result in a return to plant specific resolution of issues.

Response. The Commission has decided to eliminate the ceiling for topical report reviews, as proposed, based on the 100 percent recovery principle and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC costs for topical report reviews vary significantly depending on the particular topical report reviewed and therefore make it impractical to establish an equitable ceiling or flat fee.

6. Fees for Export/Import Licenses

Comment. Two commenters strongly recommended that if export fees are to be charged, the NRC should establish a schedule of fixed fees for various types of materials and equipment exported from the United States. The commenters stressed that, in order to properly budget for the exports and to bill the customers in a timely fashion, a fixed fee would be more appropriate. The proposed fees were to be based on the actual staff hours expended on a particular application and billed after the issuance of the export licenses, which are mainly licenses of short duration (usually 6 months). Commenters pointed out that competitive bids have to be as precise as possible and a fee based on an estimate of staff hours to be expended leads to variation in the estimates and could result in loss of business in a highly competitive situation. One commenter indicated that the concern was not with the amount of the fees but their predictability and suggested that the NRC conservatively establish a fixed schedule of fees at a high enough level to ensure that all costs are recovered.

Response: The Commission agrees with the suggestion to establish a fixed fee schedule for export and import licenses and, after analyzing the available data, has determined that fair and equitable flat fees can be established. Therefore, the Commission has adopted a fixed schedule of export and import license fees based on the average costs for the review and approval of the various categories of export and import licenses. Fee categories K of § 170.21 and 15 of § 170.31 have been modified to include the revised application fees of $920 to $7,000 and amendment fees of $580 to $1,200 for export and import licenses.

7. Part 170 Flat Fees for Small Materials Licenses

Comment. One commenter was concerned about the Commission's use of flat fees in the materials licensing and inspection programs. The suggestion was made that the Commission establish a program for full and accurate accounting of actual manpower utilized to confirm that the fee basis is proper. The commenter suggests that if there is wide variance in the data for a given service, the NRC should consider abandoning the flat fee concept and going to full cost recovery based on actual manpower expended.

Response. The Commission has examined this method in the past and still believes that the administrative burden for such a system for its approximately 9,000 licenses and registrations would be significantly greater than under the current system and would not justify the potential improvement in fee fairness and accuracy. Therefore, this suggestion has not been adopted.

D. Specific Fee Issues—Part 171

Most of the comments received expressed concern regarding the magnitude of the annual fees. These commenters also stated that the fee did not represent the cost attributable to their license or class of licensees. Many of these statements were assertions without supporting justification. These assertions were not evaluated further. However, the Commission has reevaluated its method for determining annual fees for each class of licensee and the allocation of budget costs of these licensees. In general, the Commission concludes that the method and allocation developed for and used in the proposed rule are fair, equitable and practicable. However, some changes have been made in response to public comments. Responses to specific comments on Part 171 annual fees are as follows:

1. Annual Fees for Shutdown Plants

Comment. Two commenters indicated that charging them the full annual power reactor fee is neither fair nor equitable because certain costs allocated to all power reactors are inapplicable to them because the plants are shutdown and they have filed requests for a possession only license (POL). To attempt to levy the full annual fee upon them would violate Congress' clear instructions that fees evidence a reasonable relationship to regulatory services provided to the recipient licensees.

Response. The proposed rule excluded power reactors with a POL from the fee base. In this final rule, the Commission has also excluded from the FY 1991 fee base the two cases referenced in the comments, Shoreham and Rancho Seco, as well as Ft. St. Vrain. Orders were issued by the Commission to these plants in 1990. The orders, as written, effectively shut down the plants with the same effect as a POL. Three Mile Island 2 (TMI-2) will continue to be exempted from the Part 171 annual fees. TMI-2 was notified by letter dated May 12, 1989, that because the reactor was in a shutdown and defueled mode, the Commission was granting an exemption from the annual fee for FY 1989 and thereafter until the utility was issued a POL. This final rule grants these reactor licensees full exemptions from the FY 1991 Part 171 annual fees.

2. Partial Exemptions from the Annual Fee for the Small, Older Reactors

Comment. One commenter noted the Commission had, in the past, granted two partial exemptions from the annual fees for small, low power reactors. The low power units present a special problem, e.g., if the regulatory time and effort expended on small plants is less than the time and effort expended for large units, then a cost/megawatt ratio should be determined and all units charged accordingly. If the small units require essentially the same regulatory effort as the larger units, then other reactor customers and stockholders should not be expected to subsidize the operation of small units. On the other hand, the owners of the small reactors support the continuation of the exemption.

Response. Both Big Rock Point and Yankee Rowe have filed FY 1991 exemption requests as they have in the past. As in the past, the Commission, in this final rule, has granted Big Rock Point and Yankee Rowe a partial exemption from the annual fee. These partial exemptions are based on the exemption criteria as set forth in § 171.11. In addition, because of the older designs, many of NRC generic reactor activities are not applicable to these reactors. Thus, the NRC generic costs attributable to these reactors are less than those for other power reactors. Based on these considerations, the FY 1991 annual fee for Big Rock Point will be $225,100 and the FY 1991 annual fee for Yankee Rowe will be $507,900.

3. One Uniform Annual Fee for All Power Reactors

Comment. One commenter noted the differences in the proposed annual fees for operating power reactors compared to previous years and the fact that a specific reactor type in FY 1990 was the lowest charged of the four vendor groups and is now the highest in FY 1991. The commenter indicates that "the variability of the difference is greater than the attempted refinement." The commenter suggests that, because the differences are quite small compared to the proposed basic fee, the NRC dispense with the attempted refinement and charge one uniform amount for all part 50 power reactor licensees. This would have the benefit of improved predictability for ratemaking purposes.

Response. Although a uniform fee would be much simpler to calculate and would make the part 171 annual fee program much easier to administer, the Public Law indicates that the annual charge should be assessed "under the

principle that licensees who require the greatest expenditures of agency resources should pay the greatest annual fee." Further, this concept formed the basis for prior reactor annual fees. For FY 1991, the Commission intends to continue this concept because it does not believe it is appropriate to change the concept without opportunity for public comment. The question of whether a uniform annual fee that is fair and equitable can be developed and assessed to all operating power reactors might be reconsidered in any future part 171 rulemaking.

4. Annual Fee for Fuel Facilities

Comment. One commenter questioned the allocation of $200,000 in budgeted safeguards costs to uranium hexafluoride converters (UF_6) as inappropriate. The commenter pointed out that the item relates to safeguards, licensing and monitoring pursuant to part 75 which relates to the control and accountability of special nuclear material. When the UF_6 leaves the plant, it is not enriched material. Therefore the safeguards costs should not apply. Another commenter noted that the regulation should be adjusted to provide that all part 70 high-enriched fuel fabrication license holders in the fuel facility class be assessed fees based upon their current status. One commenter believed that the two Combustion Engineering low-enriched facilities should be charged a single fee, as though they are one facility, because the two facilities represent one process. One commenter stated that the two UF_6 production facilities should have different fees because they require different amounts of safety attention. Another commenter indicated that it did not appear that the basis for allocating costs in the rule was followed and indicated that simply a uniform flat fee per facility constituted the most equitable method.

Response. The Commission has evaluated these comments and has made the following changes:

(1) Safeguards cost will not be assessed to UF_6 conversion facilities because, as the comments indicate, NRC safeguards regulations are not applicable to UF_6 conversion facilities.

(2) United Nuclear Corporation's Montville facility is included in the fee base as a high enriched uranium facility because the facility is currently operating and has an operating license similar to other high enriched uranium (HEU) fuel fabrication facilities that are being charged an annual fee.

(3) The same fee will be charged for each license in the same fuel facility categories (i.e., HEU, LEU, and UF_6) because it is not practical to allocate cost on the basis of such factors as difference in processes and whether or not the facility has more safety problems than another facility at a specific point in time.

In addition to the above changes, the Commission has adjusted the fuel facilities annual fees to account for the costs recovered from 9 small fuel facilities which are charged $100,000 per license. These adjustments will change the annual fees for HEU facilities from $2.3 million to $1.5 million; LEU facilities from $0.3–1.3 million to $0.7 million and UF_6 facilities from $0.7 million to $0.5 million.

5. Fees for Spent Fuel Storage

Comment. A commenter indicated that the NRC promoted the concept of part 72, subpart K licenses with the use of standard casks or facilities to reduce both utility and NRC costs. The commenter noted that the proposed annual fee could eliminate the economic feasibility associated with part 72 and seriously hurt development of on-site storage facilities. Other commenters indicated that because the Certificates of Compliance benefit the user (the part 72 general licensee) and not the certificate holder, the user should be assessed the annual fee. One commenter pointed out that a utility which seeks a part 72 license for an Independent Spent Fuel Storage Installation (ISFSI) and references an approved topical report for a storage system in its Safety Analysis Report (SAR) and application would be assessed an annual fee for its part 72 license, but the supplier of the storage system would not be assessed an annual fee for the topical report. One commenter stated that the annual fee would have the effect of discouraging efficiency and cost reduction that would benefit the NRC and the licensees generally, and could result in most of the current certificate holders dropping those certificates not currently in use or expected to be used within the next year.

One commenter noted that under the Nuclear Waste Policy Act (NWPA), utilities initiated construction of ISFSIs as interim facilities pending establishment of the Federally owned and operated waste repository. The commenters note that it is unreasonable to expect utilities to pay an annual fee for spent fuel storage since the Government (DOE) which accepts long-term responsibility for the spent fuel has not initiated the building of a storage facility but continues to require utilities to pay into the nuclear waste fund (NWF). The commenters recommended that for those utilities which are both paying into the NWF and paying the NRC spent fuel storage annual fee, DOE, rather than the utility, should be billed for the NRC annual fee.

Response. Based on these comments, the Commission believes that the proposed fee structure would result in unintended effects on the implementation of the recent amendments to 10 CFR part 72 adding subpart K (55 FR 29191; July 18, 1990). That is, instead of applying for a Certificate of Compliance, vendors would apply for a topical report approval in order to avoid the annual fee. This would result in shifting the fee to the specific ISFSI licensees. In addition, the Certificate of Compliance is similar to other approvals (e.g., approved topicals and approved standardized designs) where the users, not the holders of the approval, are assessed the annual fee. Therefore, the generic costs for independent spent fuel storage will be assessed in the annual fee for the licensees who have specific or general licenses to use the spent fuel storage casks. This would result in an increase in the annual fee for spent fuel storage licenses from $187,500 to $375,000 in FY 1991. The fee would be reduced in subsequent years since more facilities are expected to be licensed. The NRC is currently reviewing four specific license applications and one general license application for independent spent fuel storage. Fee Category 13 of § 171.16 has been modified to include annual fees for general licenses for storage of spent fuel under § 72.210 of part 72 of this chapter. With regard to charging the costs to DOE for payment from the NWF, the Commission has concluded that the costs are not covered by the NWPA and therefore are not recoverable from the NWF.

6. Low Level Waste (LLW) Surcharge

Comment. Many medical licensees commented that the $570 surcharge for LLW is inappropriate and should be removed from the rule for fee Category 7C. The licensees commenting on the proposed rule indicated that they hold the LLW for decay and it is disposed of either by incineration, release to regular trash, returned to the radiopharmacy or, in the case of generators, returned to the manufacturers. The licensees indicate that complete and comprehensive records are kept regarding the dates and methods of disposal.

Another commenter noted that while all three existing LLW disposal facility operators are licensed by Agreement States, they are also NRC licensees within the reach of NRC's authority

under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990. At least two of the facility operators hold specific NRC licenses. All three hold NRC general licenses granted by 10 CFR 150.20, which are used in their interstate operations. The commenter also suggested that these facilities be charged more of the LLW costs.

Fuel facilities licensees indicated that the LLW surcharge should not be assessed equally to the facilities but assessed in proportion to the facility's licensed capacity or the amount of waste generated per facility. Uranium recovery licensees indicated that they do not generate LLW for disposal since their waste, primarily mill tailings, are disposed of on site. Thus they believe the LLW surcharge should not apply to them.

Response. The Commission agrees that (1) medical waste that is held for decay does not go to a licensed disposal site and should not be subject to the surcharge proposed in the rule and (2) uranium recovery licensees should not pay a LLW surcharge since their wastes are primarily disposed of on site. Therefore, fee Categories 2.A. (2) and 7C have been deleted from the categories assessed the surcharge for LLW in this final rule. These costs will be assessed to other material licensees that generate LLW for disposal, with a higher portion being allocated to licensees that dispose of special nuclear material waste. The Commission continues to believe that the $1.9 million of LLW costs allocated to fuel facilities is appropriate and the surcharge should be the same for all large fuel facility licensees. The resulting LLW surcharge will be increased from $570 in the proposed rule to $1,400 for most materials licensees that generate LLW for disposal. The surcharge to the SNM waste disposal and small fuel facilities licensees will be $35,800. The large fuel facilities will pay a surcharge of $143,400.

7. Annual Fee for Depleted Uranium

Comment. A few commenters questioned the assessment of annual fees for depleted uranium used as shielding in sealed sources and devices. They pointed out that the depleted uranium is a line item on a broad scope license, requires no administrative costs on an ongoing basis and therefore, should be considered as part of the annual fee for a broad scope license.

Response. The Commission agrees. The shielding is often included in medical, radiography, and nuclear pharmacy licenses as part of the standard license authorization requiring little or no additional generic regulatory effort. Thus, it is not appropriate to assess a separate annual fee for the depleted uranium in these instances. However, for those specific licenses which only authorize depleted uranium as shielding, e.g., shielding for a linear accelerator, an annual fee will be assessed. The appropriate fee categories in § 171.16 have been revised in the final rule to reflect this change.

8. Annual Fees for Transportation Certificate of Compliance Holders and Licensees

Comment. One commenter recommended that the NRC costs attributable to transportation licensees be distributed to all NRC licensees who are receiving the benefits from NRC services. To this end, the commenter recommended that both the Certificate of Compliance holders and all users of the transportation casks pay the annual fee. The suggested annual fee was $1,000 for the certificate holders and $500 for the users. Another alternative suggested by the commenters was to charge an annual fee to only registered users of transportation casks and not charge the certificate holder. The commenters noted that Canada charges the users and the costs can be readily absorbed by the utilities who are the principal transporters.

Response. The Commission has carefully considered these comments and will assess the users an annual fee for their quality assurance (QA) plan approvals. An annual fee will not be assessed to Certificate of Compliance holders. This is consistent with the approach taken for other holders of "standardized" approvals, e.g., topical reports, standardized reactor designs, and Certificates of Compliance for spent fuel storage. The annual fee for users will be $1,700 per approved QA plan for use only and $29,000 per approved QA plan for use and fabrication. To recover the NRC costs attributable to all of DOE's transportation casks, an annual fee of $1.2 million will be assessed to DOE.

9. Annual Fees for Uranium Recovery Facilities

Comment. Some commenters recommended that the NRC exempt from fees ion-exchange plants and mills that are on a standby basis, in limited production, or have their reclamation plans under review by the NRC. One commenter suggested that the NRC costs attributable to uranium recovery facilities be assessed to foreign sources that deliver uranium to domestic energy plants and another commenter suggested that those costs be allocated to operating power reactors. Another commenter stated that there are many licensees that have no intention of operating again but, through no fault of their own, have not had their reclamation plans approved. They noted that delays in approval of these plans are not the fault of the licensee, but, for the most part, are attributable to the NRC. The commenter believed these uranium recovery licensees should not pay the annual fee, and suggested that the annual fee be waived as soon as it became clear that a licensee would no longer operate its facilities and had filed a request for final reclamation plan approval. They also stated that it was inequitable and counter-productive to charge an annual fee to non-operating licensees that intend to commence reclamation. Another commenter noted that it had an approved decommissioning/reclamation plan and is in the final stages of reclamation and should not pay an annual fee since the NRC research and special projects provide no benefit to the licensee.

Response. The Commission will recover the NRC costs attributable to uranium recovery from mills and ion-exchange plants in operation, or standby, or with reclamation plans under review. The Commission believes this is a practical, equitable, and fair way to recover the NRC costs, given the limited number of operating mills and is consistent with the approach taken for other classes of licensees. However, the Commission will not assess annual fees to mills that are undergoing decommissioning and reclamation because they are similar to reactors with a POL. The Commission has reviewed all uranium recovery facilities against these criteria. On the basis of the review, the Commission determined that there are 20 uranium facilities that should be assessed an annual fee. This compares to 30 in the proposed rule. This reduction in the number of facilities causes an increase in the annual fee from $51,000–77,000 and $67,000–$100,000, depending on the type of license.

10. Review of DOE Activities

Comment. A few commenters questioned why the Department of Energy (DOE) was not being charged an annual fee with respect to the general licenses referred to in 10 CFR 40.27 and 40.28.

Response. 10 CFR 40.27 and 40.28 are general licenses issued in the NRC regulations that fulfill a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Pub. L. 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general

licenses in the regulation cover only post-reclamation closure custody and site surveillance. All substantive NRC review, both site specific and generic, is essentially completed prior to the application for the general license. Because none of the inactive sites have entered the post-closure stage, DOE is not yet an NRC licensee and therefore cannot be billed under part 171. When post-closure is achieved and these sites are licensed to the Government, the Commission will reconsider the assessment of NRC costs associated with the UMTRCA.

E. Other Comments

Some commenters contended that because the NRC would be required to collect 100 percent of its budget authority and licensees would be paying for the entire budget, a mechanism should be created, either through the establishment of a separate office or an advisory committee, to (1) assess the cost-effectiveness of proposed generic programs and to eliminate potential duplication of industry sponsored programs; (2) review agency cost trends and accounting practices; and (3) develop and propose future revisions to the fee regulations. The office or committee should include industry representatives and would have the right of public review and audit.

Commenters are concerned that the NRC, in collecting 100 percent of its budget, has been freed from meaningful accountability and lacks mechanisms to adequately monitor its own expenditures. Commenters indicated that more information must be made available to the public in order for licensees to understand the basis for the budget and its allocation for fee purposes. They pointed out that the public has no access to or understanding of the mechanisms used by NRC for tracking expenditures or for allocation of the charges to specific licensees or classes of licensees. They suggested that a process be established for public review of allocations for part 170 fees and the annual charges under part 171 and for refunding or crediting fees that are improperly allocated. Another commenter indicated that the relationship between the NRC and the licensee becomes one of NRC being a service organization with the licensee as the customer with little control over services rendered. This, they said, was not consistent with the charter of a regulatory agency.

Response. The requirement for NRC to recover 100 percent of its budget through fees does not exempt the NRC from the normal Government budget review and decisionmaking process. The NRC must first submit its budget to the Office of Management and Budget. The NRC budget is then sent to the Congress for review and approval. The budget process, along with the internal NRC review process, helps ensure that the NRC budget is the minimum necessary to carry out an effective regulatory program. As in the past, the NRC will continue to base its fees on budget authority and provide the public with detailed supporting information concerning the bases for its fees. This information will continue to be available at the activity level, the lowest level for budgeting purposes. However, the Government is not subject to audit by outside parties. Audits are performed by the General Accounting Office or the agency's Inspector General, as appropriate. Therefore, these suggestions have not been adopted.

IV. Final Action—Changes Included In the Final Rule

The actions taken by the Commission in the final rule are as follows and permit the NRC to recover approximately 100 percent of its budget authority for FY 1991. Most of these changes were set forth in the proposed rule published on April 12, 1991 (56 FR 14870). Differences between the final rule and the proposed rule were explained in section III, Responses to Comments, and are noted in the following discussion.

Public Law 101–508 requires that the NRC recover 100 percent of its budget authority, including the funding of its Office of the Inspector General, less the appropriations received from the NWF for FYs 1991 through 1995 by assessing license and annual fees. The fees for FY 1991 must be collected by September 30, 1991.

The Commission has followed the guidelines in section II, as established by the Congress, in determining the fees to be assessed to comply with the Public Law. The following description explains the approach taken by the Commission to determine the amounts of the part 170 licensing and inspection fees and the part 171 annual fees to be assessed. Because the NRC must now recover 100 percent of its budget authority rather than 33 or 45 percent as in the past, the approach for updating the fee schedules necessarily varies from the approach taken in the past. The approach taken must ensure that all budgeted costs are now covered by fees. To ensure that all budgeted costs are covered, the NRC has taken the following actions.

A. Appropriations from the Nuclear Waste Fund

During FY 1990, the Congress made provisions that the amounts budgeted for high-level waste (HLW) costs were to be directly appropriated to the NRC from the NWF. Appropriations received by the NRC from the NWF are not to be recovered by the annual charges. For FY 1991, $19.7 million has been appropriated from the NWF and has been excluded from the budget authority of $465 million. Therefore, NRC must collect approximately $445.3 million in FY 1991 through part 170 licensing and inspection fees and part 171 annual fees.

B. Amendments to 10 CFR Part 170: Fees for Facilities and Materials Licenses and Other Regulatory Services; 10 CFR Part 71: Packaging and Transportation of Radioactive Material; and 10 CFR Part 52: Early Site Permits; Standard Design Certification and Combined Licenses for Nuclear Power Reactors

Seven amendments have been made to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Report that fees assessed under IOAA recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, NRC is amending 10 CFR parts 52 and 170 to assess licensing fees for the review of standardized reactor designs. This change is being made based on evaluation of the public comments received on the proposed rule (see section III to this final rule).

Second, NRC is amending the agency-wide professional hourly rate, which is used to determine the part 170 fees, to include all NRC budgeted overhead and general and administrative (G&A) costs. The hourly rate is increased by adding the overhead and G&A budgeted costs for the following organizations: Commissioners, Secretary, General Counsel, Government and Public Affairs (except for international safety and safeguards programs), Inspector General, Enforcement, Investigations, Small and Disadvantaged Business Utilization and Civil Rights, the Technical Training Center, Advisory Committee on Nuclear Waste, Advisory Committee on Reactor Safeguards, Atomic Safety and Licensing Appeal Panel, and Atomic Safety and Licensing Board Panel. Most of these overhead and G&A organizations were previously excluded by the Commission from fee

recovery (42 FR 22149; May 2, 1977). They have now been included because the Commission must recover 100 percent of its budget authority. As a result of including the additional organizations, the professional hourly rate in § 170.20 is increased by 25 percent (from $92 to $115 per professional staff hour). The NRC has increased the current part 170 licensing and inspection fees for all applicants and licensees to reflect this increased hourly rate.

Third, the NRC is amending 10 CFR parts 71 and 170 to recover costs expended by the NRC in conducting inspections related to casks, packages, shipping containers, and part 71 vendor QA programs and inspections conducted of manufacturers and initial distributors of sealed sources and devices. The NRC has completed Phase One of the transportation package-supplier inspection program. During this pilot program, six package-supplier (vendor) inspections were conducted. The inspections focused on implementation of procedures and approved QA programs. Inspection fees were not assessed for the six inspections conducted in Phase One because these inspections were pilot inspections designed to determine the need for safety inspections in the package-supplier industry. On the basis of the results of Phase One, the NRC plans to continue the program. Therefore, consistent with NRC policy of charging for health and safety inspections, this final rule would recover the full cost of routine and nonroutine inspections through fees. Routine inspections are estimated to range in cost from $6,000 to $22,000. Fees associated with the review of casks, packages, shipping containers, and vendor QA programs are currently assessed under § 170.31, fee categories 10A and 10B. A similar pilot program has been conducted for inspections of manufacturers and initial distributors of sealed sources or devices containing a sealed source. The NRC plans to continue this program as well.

Therefore, the final rule would recover the costs of conducting routine and nonroutine inspections through fees. Fees associated with the review of sealed sources and devices are currently assessed under § 170.31, fee categories 9A through 9D. Note that similar inspection fees were established by the NRC, effective August 17, 1990, for activities relating to Certificates of Compliance for spent fuel storage casks and for inspections related to the storage of spent fuel (55 FR 29181; July 18, 1990).

Fourth, the NRC is charging both (1) licensing fees for review of the registrations (Form 241) filed with the NRC by Agreement State licensees who seek permission to perform work in non-Agreement states under the reciprocity provisions of 10 CFR 150.20 and (2) inspection fees for those inspections conducted by the NRC of Agreement State licensees. Under 10 CFR 150.20, any person holding a specific license from an Agreement State authorizing use at temporary job sites is granted a general license to conduct the same activity in non-Agreement States for a period not to exceed 180 days per calendar year. The NRC reviews Form 241 filed with the NRC to conduct activities in non-Agreement States and conducts periodic inspections of activities performed under the reciprocity provisions. The NRC has established an application fee of $600 for the registration review and will assess the inspection fees shown in the specific categories of 10 CFR 170.31 to those Agreement State licensees that are inspected by the Commission. For example, an Agreement State licensee performing radiography work in a non-Agreement State and inspected by the Commission would pay the applicable routine inspection fee of $1,200 in fee Category 3.0. Similar fees are assessed by some Agreement States to NRC licensees who perform work in Agreement States under the reciprocity provisions.

Fifth, the NRC is amending § 170.2, Scope, to broaden and to clarify the Commission's intent to more fully collect fees for identifiable services. For example, fees based on the full-cost recovery method will be assessed for preapplication license reviews for potential construction permit and operating license (CP/OL) applicants for reactors, fuel facilities low-level waste (LLW) disposal, and standardized reactor designs, even though an application may never be filed.

Sixth, the NRC is eliminating the ceiling of $50,000 on part 170 fees for reactor and material topical report reviews and amendments to topical reports and full costs will be recovered for these services. In the past, the Commission had decided to retain a ceiling on fees for the review of topical reports to encourage submission of these reports (55 FR 21173; May 23, 1990). However, the Commission may legally charge the full cost of processing an application for which the applicant receives a special benefit not available to the public at large. *Mississippi Power and Light Co.* v. *NRC*, 601 F.2d 223, 230 (5th Cir. 1979), *cert. denied* 444 U.S. 1102 (1980); see also *Phillips Petroleum Co.* v. *FERC*, 786 F.2d 370, 376 (10th Cir. 1986) (upholding full cost fees, under IOAA, by FERC on licensees despite benefits to the general public). Therefore, following Congressional guidance that each licensee or applicant pay the full costs to NRC of all identifiable regulatory services received, the Commission has removed the $50,000 ceiling.

Seventh, the NRC has changed its policy for exempting certain classes of licensees from fees by revoking the exemption provisions in § 170.11(a) (1), (2), (8), (9) and (11). Specifically, the Commission has established license fees for export and import license applications previously exempted from fees under § 170.11(a) (1) and (2). Fees are established in part 170 for the export or import licensing of a production or utilization facility, and for export or import licensing of byproduct material, source material, or special nuclear material, including heavy water, tritium and reactor grade graphite. Based on the public comments received (see section III of this final rule), the Commission has established flat fees for both export and import licenses. This is a change from the proposed rule, where the fees were to be based on recovering the professional staff hours and contractual services costs expended for the review. The flat export and import license fees would range from $580 to $7,000, depending on the type of material or equipment being exported or imported and the type of action (new license or amendment). Any review of a route approval required in conjunction with an import license will also be assessed fees under part 170.

Additionally, holders of licenses specifically authorizing depleted uranium as shielding only in devices and containers who were previously exempt from fees under § 170.11(a)(8) will be subject to the fees under fee category 2B of § 170.31 and § 171.16. Based on the comments received, the NRC will not assess an annual fee for the depleted uranium when it is part of a license authorizing other activities (e.g., medical or radiography license). The NRC will also assess fees to State and local governments and Indian Tribes and Indian organizations. These licensees were previously exempted from fees under § 170.11(a) (9) and (11). Under the final rule, these licensees will pay the licensing and inspection fees established in part 170 for the fee category(ies) applicable to the license. For example, a State agency that is authorized to possess and use a soil-density gauge containing radioactive material will pay the applicable fees for

fee category 3P. These licensees plus Government agencies with NRC licenses or certificates will also become subject to the new annual fees established in part 171 for nonpower reactor licensees and materials licensees. The Commission will maintain the current exemption from fees in § 170.11(a)(4) for nonprofit educational institutions and has added a similar provision in § 171.11.

The NRC estimates that approximately $79.5 million will be recovered in FY 1991 from the fees assessed under 10 CFR part 170. The final amendments, including the revised hourly rate, will have minimal effect on FY 1991 collections because the final rule will not become effective until the last month or so of the fiscal year. The amount recovered is expected to increase by approximately 25 percent in FY 1992.

C. Amendments to 10 CFR part 171: Annual Fees for Power Reactor Operating Licenses

The NRC has amended this regulation, which currently establishes annual fees for operating power reactors only, to increase the annual fees for operating power reactors, and to add annual fees for nonpower (test and research) reactors, materials licensees including fuel fabrication facilities, uranium recovery facilities, transportation and cask users, other small materials licensees, and Government agencies who are licensed by the NRC. All annual fees in part 171 are based on the increased hourly rate.

1. Costs Attributable to Power Reactors

The NRC has made two changes to the operating power reactor annual fee currently being assessed.

First, part 171 has been expanded to include additional regulatory costs that are attributable to power reactors other than those costs that have previously been included in the annual fee for operating power reactors. These additional costs include the costs of generic activities that provide a potential future benefit to utilities currently operating power reactors. These generic activities are associated with reactor decommissioning, license renewal, standardization, and construction permit (CP) and operating license (OL) reviews. Also included are NRC generic costs that are primarily related to power reactor licensees, but that support other NRC applicants and licensees (e.g., costs to update 10 CFR part 20 of the Commission's regulations and to operate the Incident Response Center) because the NRC would incur these costs in about the same amount to regulate power reactors even if they did not support other applicants and licensees.

Second, the NRC has included in the annual fee for operating power reactors those activities related to specific power reactors that are not billed under part 170 (e.g., NRC staff participation in contested hearings, responses to Congressional inquiries regarding specific reactors, orders issued pursuant to 10 CFR 2.204 and amendments resulting specifically from these orders, responses to 10 CFR 2.206 petitions, and responses to reactor allegations). Because the Commission is adhering to its previous policy decisions that these types of activities not be included in part 170 (42 FR 22159; May 2, 1977 and 49 FR 21297, 21300; May 21, 1984), the costs of these activities are recovered through the annual charge under part 171.

In part 171, the Commission has continued to identify and has determined power reactor annual fees that are based on the type of reactor (PWR, BWR), the reactor vendor (e.g., General Electric, Westinghouse), and the location of the reactor (seismic review costs may vary from region to region). The Commission will continue to consider requests for exemption from the full reactor annual fee for the smaller, older power reactors (e.g., Big Rock Point, and Yankee Rowe). Both Big Rock Point and Yankee Rowe have filed FY 1991 exemption requests in accordance with the criteria in § 171.11. The Commission has granted partial exemptions from the annual fees to both reactors for FY 1991. The reactors have been removed from the fee base in determining the calculation of the annual fees for the other operating power reactors. However, the Commission reemphasizes its intent to grant exemptions sparingly (51 FR 33227; September 18, 1986). Therefore, the Commission strongly discourages licensees from filing exemption requests. As the Commission has indicated previously, if a power reactor licensee has only the authority to possess nuclear material and the Commission has received a request from the licensee to amend its license to permanently withdraw its authority to operate the reactor or the Commission has permanently revoked such authority, the licensee is not subject to the annual fee under this part for that power reactor (51 FR 33228; September 18, 1986). Consistent with this policy, the Commission has granted an exemption from the FY 1991 annual fees for Ft. St. Vrain, Rancho Seco, Shoreham and TMI-2 because of the orders that were issued by the Commission to these plants in 1990. The orders, as written, effectively shut down these plants with the same effect as a possession only license.

Considering the above modifications, budgeted costs of approximately $290.9 million have been identified as being attributable to the operating power reactor class of licensees. Thus, by modifying part 171, the base annual fee for an operating power reactor is increased from approximately $1 million to approximately $2.7 million.

2. Costs Attributable to Other than Power Reactors

Pursuant to Public Law 101-508, the NRC has amended part 171 to establish and assess annual fees for costs applicable to nonpower reactors, and materials licensees. Materials licensees include fuel fabrication facilities, spent fuel storage casks and facilities, uranium recovery facilities, and those who hold transportation Certificates of Compliance, approvals of QA programs, sealed source and device registrations, and other small materials licensees. Government agencies licensed by the NRC will also be charged an annual fee based on the type of license or certificate they possess. Consistent with the guidance in the Conference Report, annual fees will be assessed for NRC generic regulatory costs and other costs not recovered under part 170 but attributable to these licensees and holders of certificates, registrations and approvals. The NRC costs are associated with generic activities (e.g., rulemaking, upgrading safeguards requirements, modifying the Standard Review Plans, overseeing regional programs, and developing inspection programs) and other activities not billed under part 170 (e.g., event and allegation followup, contested hearings and responses to § 2.206 petitions) that are required to regulate these licensees and certificate holders. The following discussion explains the assessment of the annual fees for nonpower reactors and the various classes of fuel cycle and materials licensees.

Nonpower Reactors. All test and research reactors, except those operated by nonprofit educational institutions, are included in this class. This would include those reactors operated by the Federal government. Budgeted costs of approximately $500,000 have been identified as being attributable to licensees who are not nonprofit educational and are licensed to operate test and research reactors. An annual fee of $50,000 will be assessed for each test and research reactor.

Major Fuel Facilities. The licensees in this class are predominantly persons with licenses authorizing them to possess and use significant quantities of special nuclear material in fuel processing and fabrication or significant quantities of source material in the conversion of uranium hexafluoride (UF_6). Twenty facilities have been identified and included in this class of licensees: six manufacturers of low-enriched fuel, three manufacturers of high-enriched fuel, two who operate UF_6 conversion facilities and nine other facilities that possess and use special nuclear materials. The NRC budgeted costs attributable to these fuel facilities are approximately $10.6 million. The Commission has established and will assess an annual charge to these major fuel facilities to recover NRC generic budgeted costs that are attributable to these facilities. The annual fee per facility license would range between $540,000 and $1.5 million depending on the type of license (e.g., high enriched uranium, low enriched uranium, and UF_6 conversion). The other small facilities will be assessed an annual fee of $100,000 per license.

Storage of Spent Fuel. The licensees in this class are holders of licenses, including a general license, to receive and store spent fuel at an ISFSI. The NRC costs attributable to these licensees are $1.5 million. The annual fee is $375,000 per license. The NRC will not assess an annual fee for spent fuel storage Certificates of Compliance.

Uranium Recovery Operations. Licensees that are subject to annual fees in this class includes mills, in-situ leaching facilities, heap leaching facilities, ore buying stations, ion-exchange facilities, and metal extraction facilities. The NRC budgeted generic costs for these types of licensees are $1.9 million, resulting in an annual fee for these facilities ranging from $67,000 to $100,000, depending on the type of license (e.g., mills, in-situ leaching, and heap leaching). The NRC will not assess an annual fee to uranium mills with approved reclamation plans or the low level waste surcharge to uranium recovery facilities since their waste is disposed of on site.

Transportation of Radioactive Material. Holders of approvals for QA programs and the Department of Energy are included in this class and are subject to an annual fee. The NRC budgeted costs attributable to transportation of radioactive material are $4.8 million. $1.2 million will be assessed to the Department of Energy for NRC activities associated with all of their transportation casks. The remaining costs are allocated to holders of QA plan approvals. The annual fee for approved QA plans is $29,000 for users and fabricators and $1,700 for users only. The NRC will not assess an annual fee for transportation cask Certificate of Compliance holders.

Materials Licensees. Licensees in this class would include but not be limited to doctors, hospitals, radiographers, well loggers, gauge users, sealed source and device registrants, and nuclear laundries, all of which are currently assessed fees under part 170. In order to recover the $27.2 million in budgeted NRC costs attributable to this class of licensees, annual fees have been established for materials licensees. The annual fees for most of these licensees are expected to range from $290 to $10,700, depending on the type of license held. The annual fee for a military "master" broad-scope license is $200,000. The NRC will not assess the low level waste (LLW) surcharge to nuclear medical licensees, other than broad medical licensees, because most of their waste is held for decay and does not require disposal at licensed LLW disposal sites. Materials licensees may pay reduced annual fees if they (1) qualify as a small entity under the Commission's size standards (50 FR 50241; December 9, 1985) and (2) file a completed NRC Form 526 with the Commission certifying that they are a small entity. The Commission estimates that the reduced fee for small entities will result in $22.3 million of the $27.2 million being assessed as part of the base annual fee for material licensees.

Government agencies that hold an NRC license or certificate are subject to the annual fees. With respect to Government agencies that have NRC licenses, the Commission has followed the mandate of the IOAA that specifically indicates that fees should not be assessed to Federal agencies for identifiable services rendered. Public Law 101-508, which now requires that the NRC recover 100 percent of its budget authority, is silent with respect to recovery through annual fees of NRC costs that are attributable to other Government agencies. Because Public Law 101-508 does not contain a restriction on charging government agencies analogous to the IOAA, the NRC will recover its costs, under part 171, for those Government agencies that hold NRC licenses or certificates.

Under this final rule, Government agencies with NRC licenses will pay annual fees, but not licensing and inspection fees under part 170, that are the same as those paid by other NRC licensees. For example, Veterans Administration (VA) hospitals, Army irradiators, and National Aeronautics and Space Administration (NASA) radiographers will be assessed an annual fee that is based on the fee category assigned the license. For instance, NASA would pay the annual fee assigned to fee Category 3.0. for a license authorizing radiography. In addition, a new annual fee category 17 has been established for those military "master" broad licenses that authorize multiple activities at multiple locations under the same license and a new annual fee category 18 has been established for Department of Energy Certificates of Compliance for transportation casks.

With respect to exemptions for materials licenses, the Commission plans to establish a very high threshold for eligibility for any requested exemption to the annual fees. The NRC will rarely grant an exemption because of the requirement by Congress that the NRC recover 100 percent of its budget authority through fees. Therefore, the NRC strongly discourages licensees from filing exemption requests. The Commission notes that the impact of the final rule on small entities has been evaluated in the Regulatory Flexibility Analysis (see Appendix A to this document). Based on this analysis, the Commission has reduced the annual fees for small entities.

Those materials licensees that hold a possession only license and who have permanently ceased operations will not be subject to the annual fees under this part for that materials license. Those licensees, who by the effective date of this rule, wish to relinquish their license(s) and who are capable of permanently ceasing licensed activities entirely by September 30, 1991, will not be required to pay the annual fee if within the 30 day period they so notify the Commission in writing according to the Commission's regulations in 10 CFR 30.36, 40.42, 50.82, and 70.38 and can promptly (before September 30, 1991) comply to the Commission's satisfaction with the conditions for license termination in those regulations. This will also apply to holders of Certificates of Compliance, quality assurance program approvals and holders of sealed source and device registrations who wish to relinquish their certificates, approvals or registrations before September 30, 1991, to avoid payment of the annual fee and who so notify the Commission in writing by the effective date of this final rule and comply, to the Commission's satisfaction, with all applicable regulatory requirements.

These amendments to part 171 do not change the underlying basis for part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Report, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee." 136 Cong. Rec., at H12692–93.

3. Costs Remaining to be Recovered After Amendments Identified in Items 1 and 2 of this Section IV

After making the necessary amendments to 10 CFR parts 170 and 171, shown in items 1 and 2, approximately $28.4 million remains to be collected in order to meet the 100 percent recovery requirements of the Public Law (See Table I).

TABLE I.—RECOVERY OF NRC'S FY 1991 BUDGET AUTHORITY

Proposed recovery method	Estimated amount ($ in millions)
Nuclear Waste Fund	$19.7
Part 170 (license and inspection fees)	[1]79.5
Part 171 (annual fees),	
Power Reactors	290.9
Nonpower Reactors	.5
Fuel Facilities	10.6
Spent Fuel Storage	1.5
Uranium Recovery	1.9
Transportation	4.8
Material Users	22.3
Subtotal	332.5
Costs remaining to be recovered not identified in items 1 and 2 above	33.3
Total	465.0

[1] Amount of recovery is expected to increase by approximately 25% in FY 1992 after the final rule becomes effective. The amendments, including the hourly rate, will have minimal effect on FY 1991 collections because the final rule will not be effective until the last month or so of the fiscal year.

The budgeted costs of $33.3 million that remain to be recovered are for the following activities:

(a) Activities not attributable to an existing NRC licensee or class of licensees:

—Reviews for Government agencies including the Department of Energy (DOE), activities that do not result in issuance of a license or certificate;
—The Office of Governmental and Public Affairs (GPA), international cooperative safety program and GPA's and the Office of Nuclear Material Safety and Safeguards' (NMSS) international safeguards activities;
—LLW disposal generic activities; and
—Uranium enrichment generic activities.

(b) Activities not assessed 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees on the basis of existing Commission policy:

—Licensing, inspections, and other NRC activities for nonprofit educational institutions;
—Reduction in annual fees for small entities;
—Licensing reviews for export/import (FY 1991 only); and
—Licensing reviews of standard reactor design applications (FY 1991 only).

These activities have been examined and evaluated by the Commission to determine how their costs should be recovered, through annual fees, considering—

—The beneficiary of the NRC activities;
—The NRC licensee's ability to pay the fees; and
—The NRC administrative burden associated with determining and collecting the fees and the discretion afforded NRC by the courts and conferees not to assess the annual fees on all licensees.

To recover the budgeted costs of $28.4 million for these activities, the Commission considered the following options:

(1) Allocating costs to operating power reactor licensees only.

(2) Allocating costs to all NRC licensees currently subject to the fee regulations (i.e., reactor, fuel cycle facility, and materials licensees).

(3) Allocating costs to each individual licensee, classes of NRC licensees or persons that receive the NRC services, where legally feasible. (This option would have also required selection of Option 1 or 2 above to achieve 100 percent recovery.)

The Commission considered only those alternatives that would ensure that all NRC activities are covered by fees so that approximately 100 percent of the budget is recovered.

Alternatives that led to less than 100 percent collection of the budget in FY 1991 were not considered because, as Congress recognized, certain budgeted costs are not associated with an NRC licensee or class of licensees. Nonetheless, Congress required these costs to be collected.

Activities not attributable to an existing NRC licensee or class of licensees. This first major category of costs covers those NRC activities that are not attributable to an existing NRC licensee or to a class of licensees. This category includes the reviews of certain DOE activities and actions; GPA international cooperative safety program; NMSS and GPA international safeguards activities; the Office of Nuclear Regulatory Research's (RES) and NMSS generic low-level waste activities; and NMSS and RES generic uranium enrichment activities.

With regard to DOE, the Office of Nuclear Reactor Regulation (NRR) reviews DOD/DOE reactor projects and NMSS performs safety and environmental reviews of DOE activities and actions under the West Valley Demonstration Project Act and Uranium Mill Tailings Radiation Control Act (UMTRCA). DOE has not been issued licenses for these reviews. These reviews result in approximately $3.7 million in NRC budgeted costs. Because over 95 percent of these costs are for NRC regulation of DOE West Valley and UMTRCA activities, both of which indirectly benefited operating power reactors, the NRC has included these costs in the annual charge for operating power reactors (Option 1). When post-closure is achieved for UMTRCA sites and the sites are under a NRC general license in accordance with 10 CFR 40.27 and 40.28, the NRC will reconsider the assessment of UMTRCA costs.

The GPA international cooperative safety program and the NMSS and GPA generic international safeguards program, which includes implementation of the United States/International Atomic Energy Agency (US/IAEA) Safeguards Agreement, result in budgeted costs of approximately $4.9 million. These activities are not directly associated with any NRC licensee or any one class of licensees. However, approximately 70 percent of these costs are associated with GPA's international cooperative safety program that has a major component devoted to activities associated with reactors. U.S. power reactors receive an indirect benefit from this component. For example, the NRC, as part of its cooperative exchange program, receives extensive reactor incident information and valuable research results from foreign countries which are used to assist in improving the safe operation of U.S. power reactors. The other 30 percent of the costs are for activities associated with international safeguards, which primarily support nuclear nonproliferation. However, these activities do provide a minor benefit to power reactors (e.g., IAEA inspects reactors). Because a substantial portion of the total NRC costs for international activities benefits reactors, the NRC has

included the costs in the annual charge for operating power reactors (Option 1).

The generic budgeted costs relating to RES and NMSS LLW disposal activities amount to approximately $9.8 million. The existing three LLW disposal facilities are licensed by Agreement States, and two of these facilities also have NRC licenses for disposal of special nuclear material. It is not reasonable to allocate the entire LLW generic regulatory costs to these two licensees. However, approximately 60 percent of LLW is generated by power reactors, 20 percent by fuel facilities, and 20 percent by materials licensees. Because these NRC licensees will indirectly receive the benefits from these NRC LLW expenditures, the NRC has determined that these licensees pay the costs of these activities (Option 2). The distribution of the costs would be based on the estimated amount of waste generated. Therefore, the Commission has assessed approximately 60 percent of the LLW generic costs ($6 million) to operating power reactors, approximately 20 percent to fuel cycle facilities ($1.9 million) and approximately 20 percent to materials licenses ($1.9 million). Once the NRC issues a license to dispose of byproduct LLW, the Commission will reconsider the assessment of generic costs attributable to LLW disposal activities.

NMSS and RES are establishing the regulatory framework to regulate uranium enrichment facilities. The budgeted costs for these activities are approximately $1.1 million. Although an application has been submitted to construct a uranium enrichment facility, no uranium enrichment licensee now exists upon which to assess an annual charge for these generic costs. Because uranium enrichment provides indirect benefits to operating power reactors, Option 1 was selected (i.e., recover the cost through annual charges to operating power reactors). Once the NRC issues a uranium enrichment facility license, the Commission will reconsider the assessment of generic costs attributable to uranium enrichment facilities.

Activities and budgeted costs not currently assessed 10 CFR part 170 licensing and inspection fees based on Commission policy. The second major category of costs covers those activities for which a specific identifiable applicant or licensee receives NRC services and for which fees could be assessed under part 170. However, fees are not currently assessed for these activities as a result of an existing Commission fee exemption policy decision.

Activities included in the category are license reviews and inspections for nonprofit educational institutions (i.e., license reviews and inspections of certain nonpower reactors and materials users). These expenses, approximately $2.2 million, are exempted from part 170 licensing and inspection fees (§ 170.11(a)(4)). This exemption is based on the Commission's long-standing policy of exempting educational institutions that use materials for the teaching and training of students or research (33 FR 10923; August 1, 1968). Note, however, that the costs of any commercial activities that are authorized by the licenses are recovered through fees under part 170. For example, fees are charged for licenses that authorize use of strontium-90 eye applicators in the treatment of eye disease and xenon-133 for blood flow pulmonary functions; distribution of *in vitro* kits and radiopharmaceuticals; services the licensee provides to other persons or licensees for a charge, such as soil density measurements and installation, calibration, and leak testing of equipment containing radioactive material, and use of licensed material for consulting services. Because many of these entities have limited ability to pass regulatory costs to their clients, assessing fees could affect the ability of these organizations to continue to perform the licensed services. In addition, these organizations provide broad national support and benefits to the education and health care fields.

The Commission after review of the public comments has decided to continue the current exemption from fees as established in § 170.11(a)(4). Because the NRC licensing and inspection activities associated with these licensees do not provide benefits to any other NRC class of licensees, the criteria of who can equitably and practicably afford to pay in this case lead to selecting Option 1 (i.e., allocate the costs to operating power reactors).

The other activity for which a specific recipient of an NRC service can be identified is the review of specific applications for standard reactor designs and early site permits. Consistent with NRC policy to promote standardization, existing NRC regulations defer, for up to 15 years, NRC costs for reviewing standard reactor designs. This is equivalent to the deferral of approximately $5.4 million in FY 1991.

Based on the comments received and the Commission's reevaluation of this issue, the Commission has decided to change the deferral policy and assess the review costs to the vendors under part 170 as the work progresses on the standardized designs. Since part 170 has been amended to reflect this change as of the effective date of this final rule, the full effect of the revised regulation will not take place until FY 1992 and subsequent years. Therefore, for FY 1991 only, the Commission will recover the costs from operating power reactors (Option 1).

The final rule revising part 170 license fees will not become effective before August 1991, which will be too late for the Commission to collect the budgeted costs of $1.3 million for its export and import activities in FY 1991. Therefore, to comply with the requirements of Public Law 101–508, the NRC will assess these costs to operating power reactors for FY 1991 only, on the basis of the criteria of who can equitably and practicably afford to pay. In future years, the costs associated with these activities are expected to be recovered under the revised part 170.

As a matter of policy, the Commission, in accordance with the Regulatory Flexibility Act, has decided to establish a maximum fee for small entities. As a result of placing a ceiling on the annual fee for small entities, $4.9 million must be collected from other NRC licensees. In order for the Commission to recover 100 percent of its budget authority in accordance with the Public Law, the Commission will recover $4.3 million from operating power reactors and $.6 million from large entities licensed under the materials program (Option 2).

In summary, the Commission has decided that the $33.3 million identified for the three categories described above be distributed among the NRC classes of licensees as follows:

$28.9 million to operating power reactors;

$1.9 million to fuel facilities; and

$2.5 million to other materials licenses.

This distribution results in an additional charge of approximately $259,000 per operating power reactor, $143,500 for each HEU, LEU and UF_6 fuel facility; $35,900 for other fuel facilities and waste disposal licensees in Category 4A; $1,500 for each materials licensee in a category that generates a significant amount of low level waste, and $100 for other material licensees. When added to the base annual fee of approximately $2.7 million per reactor, this will result in an annual fee of approximately $2.9 million per operating power reactor. The total fuel facility annual fee would be between $683,000 and $1.6 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

These additional charges would recover NRC costs not directly or solely attributable to a specific class of NRC licensees or costs not recovered from all NRC licensees on the basis of Commission policy decisions. However, because of the previously discussed Commission policies, the NRC will recover them from the designated classes of licensees. In adopting this approach, the Commission notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees." *Florida Power & Light Co.* v. *NRC*, 846 F.2d 765,770 (D.C. Cir. 1988), *cert. denied*, 109 S. Ct. 1952 (1989). As noted earlier, the conferees on Public Law 101–508 have acknowledged the D.C. Circuit's holding that the Commission was within its legal discretion not to impose fees on all licensees.

For FYs 1992 through 1995, those annual fees of less than $100,000 will be billed once a year during the first quarter of the FY. Because there are thousands of licensees who would pay less than $100,000 per year, quarterly billings would impose additional administrative costs upon the NRC that cannot be justified. Annual fees of $100,000 or more will be billed on a quarterly cycle.

V. Section-by-Section Analysis

The following analysis of those sections that are affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Part 52

Section 52.19 Permit and Renewal Fees

Section 52.19 is amended to remove the reference to deferred recovery.

Section 52.49 Fees for Review of Applications.

Section 52.49 is amended to remove the reference to deferred recovery.

Part 71

Section 71.0 Purpose and Scope

Section 71.0(c) is amended to include certificate of compliance holders.

Section 71.4 Definitions

In this section, the term "certificate holder" is added to mean a person who holds a Certificate of Compliance or other package approval issued by the Commission.

Section 71.93 Inspection and Tests

Section 71.93(a) is broadened to include certificate holders as well as licensees.

Part 170

Section 170.2 Scope.

This section is modified to add new paragraphs (o), (p), and (q). Paragraph (o) will expand the scope of part 170 to cover those persons who may be potential applicants and file documents, analyses, or reports for Commission review and/or consult with the Commission. This may include any company, corporation, individual, unit of State or local government, or any other party over whom NRC has regulatory authority under its enabling legislation or as established in attendant regulations. This amendment is to clarify that, in the event a person aborts the attempt to develop and seek a license and never files an application with the NRC after the NRC has spent time consulting with a potential applicant and/or reviewing application related documents, analyses, or reports, that the NRC will recover, through fees, any preapplication/licensing review costs. Paragraph (p) expands the scope of part 170 to cover an applicant for or holder of an import or export license issued in accordance with part 110 of this chapter. Paragraph (q) expands the scope of part 170 to cover Agreement State licensees who register under the general license requirements of 10 CFR part 150 including NRC inspections conducted of activities covered under the general license. These actions are consistent with the intent of Congress to assess fees so that each applicant, licensee, or person pays NRC the full cost of all identifiable regulatory services received by the applicant, licensee, or person.

Section 170.3 Definitions.

Four definitions are added: *Act*, meaning the Atomic Energy Act; *Agreement State*, now used in part 170 because Agreement State licensees who file Form 241 with the NRC for review or who receive NRC inspections under the reciprocity provisions of 10 CFR 150.20 will become subject to the licensing and inspection fees of this part and *High Enriched Uranium* and *Low Enriched Uranium* because fees are included for these specific categories of export and import licenses.

Section 170.11 Exemptions

This section is amended to remove the current exemptions in § 170.11(a) (1), (2), (8), (9) and (11). As a result, import and export licensees will be subject to the fees established in §§ 170.21 and 170.31, and State and local government agencies and Indian Tribes and Indian organizations, and licenses issued by the NRC specifically authorizing depleted uranium for shielding are subject to the licensing and inspection fees in § 170.31 as well as the annual fees established for the first time in § 171.16.

Section 170.12 Payment of Fees.

This section is amended to remove the language in paragraphs (b), (c), (d) and (e)(2) relating to deferral of fees for review of standardized reactor designs because these costs will no longer be deferred but will be assessed on or after the effective date of this final rule.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1991 costs. Accordingly, the professional staff-hour rate for NRC for FY 1991 for all fee categories that are based on full cost is $115 per hour; or $200,900 per direct FTE. This rate is based on the FY 1991 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF as follows:

1. All direct FTEs are identified by mission area (see Table II).

TABLE II.—ALLOCATION OF DIRECT FTES BY MISSION AREA

Mission area	No. of direct FTEs[1]
Reactor Safety & Safeguards Regulation	1015.2
Nuclear Safety Research	148.1
Nuclear Material & Low-Level Waste Safety & Safeguards Regulation	273.9
Special and Independent Reviews, Investigations, and Enforcement	71.0
Nuclear Material Management and Support	22.0
Total direct FTE	[2] 1530.2

[1] Regional employees are counted in the office of the program each supports.
[2] In FY 1991, 1530.2 FTEs of the total 3,160 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,629.8 FTEs will be considered overhead and general and administrative.

2. In determining the cost for each direct labor FTE the following approach is used: NRC budgeted costs are allocated to the following four major categories (see Table III):

(a) Salaries and benefits.
(b) Administrative support.
(c) Travel.
(d) Program support.

3. Direct program support, the use of contract or other services in support of the line organization's direct program, is

excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the proposed rule published December 1, 1989 (54 FR 49763), and excluding direct Program Support funds, the remaining $307.4 million allocated uniformly to the direct FTEs (1530.2) results in a rate of $200,900 per FTE for FY 1991. The Direct FTE Hourly Rate is $115 per hour (rounded down to the nearest whole dollar). This rate is calculated by dividing $307.4 million by the number of direct FTEs (1530.2 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." This section is revised to indicate that the professional staff-hour rate for FY 1992 through 1995 will be published as a Notice in the Federal Register during the first quarter of each fiscal year.

TABLE III.—FY 1991 BUDGET AUTHORITY BY MAJOR CATEGORY

[dollars in millions]

Salaries and benefits	$213.8
Administrative support	74.6
Travel	12.4
Total nonprogram support obligations	$300.8
Program Support	144.5
Total Budget Authority	$445.3
Less Program support (Direct Program)	137.9
Budget Allocated to Direct FTE	$307.4

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1991 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) cost expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1991 rate shown in § 170.20.

Section 170.21, Category J, Special Projects, is amended to (1) eliminate the ceiling of $50,000 for topical report reviews and (2) provide for the recovery of preapplication/licensing activities. The fees for these reviews are based on full-cost recovery. Again, this action will recover the full cost to the NRC of all identifiable regulatory services an applicant licensee, or person receives.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989 and July 2, 1990 rules, as appropriate. With respect to topical report applications currently on file and which are still pending completion of the review, for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the cost incurred after any applicable ceiling was reached through the effective date of this rule will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions or supplements to a topical report on or after the effective date of this rule will be assessed at the rate established by § 170.20. Footnote 4 is removed because the costs for standardized reactor design reviews will no longer be deferred but will be assessed on or after the effective date of this final rule. Footnote 5 is removed because the ceiling for topical report reviews is eliminated.

In § 170.21, a new Category K, import and export licenses, is added to recover those costs that are expended on applications filed with the Commission on or after the effective date of the final rule for issuing import or export licenses for production and utilization facilities and components for production and utilization facilities that are subject to NRC import and export regulations of part 110. In this final rule, the fees have been changed to flat fees and must be remitted with the application for the license or amendment. This represents a change from the proposed rule where the fees were to be assessed based on the professional staff hours expended for the review of the application.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section are also modified to reflect the FY 1991 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are increased by 25 percent across the board to reflect the increase in the professional hourly rate from $92 per hour in FY 1990 to $115 per hour in FY 1991. The increase is applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D and 10.B, and will be assessed for applications filed or inspections conducted on or after the effective date of the final rule.

For example, an industrial radiography licensee (Category 3.0.) will pay revised license and inspection fees as follows:

Type of fees	Current fees	Increase (%)	Final FY 1991 fees
Application	$2,400	25	$3,000
Renewal	1,400	25	1,800
Amendment	390	25	490
Routine Inspection	920	25	1,200
Nonroutine Inspection	2,000	25	2,500

Most of this increase is due to the fact that certain overhead and G&A costs were previously excluded in developing the professional hourly rate and now have been included in the rate to recover approximately 100 percent of

the NRC's budget authority for FY 1991. For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services) the revised hourly rate of $115, as shown in § 170.20, will apply to those professional staff hours expended on or after the effective date of this rule.

New inspection fees have been added for fee categories 9A through 9D. The NRC has conducted a pilot inspection program of manufacturers and initial distributors of sealed sources and devices containing a sealed source. The NRC plans to continue this inspection program. To recover the costs related to these inspections, fees for all routine and nonroutine inspections conducted on or after the effective date of the final rule will be assessed on a per-inspection basis. The fees assessed for both routine and nonroutine inspections will be based on the full cost of conducting the inspection (professional staff hours and any contractual services costs expended) and will be billed quarterly in accordance with § 170.12(g). Fees for routine inspections of these manufacturers and distributors are estimated to range from $2,000 to $3,000 on the basis of information gathered on some of the previous inspections. The inspection fees are payable upon notification by the Commission. Fees for inspection costs would include preparation time, time on the site, and documentation time related to the specific inspection, but would exclude the time involved in processing and issuing a notice of violation or a civil penalty.

New inspection fees have also been added for fee categories 10A and 10B. The NRC has completed Phase One of a pilot program relating to the transportation package-supplier inspection program. On the basis of the results of Phase One, the NRC is proceeding to implement a permanent transportation package-suppliers inspection program. This revision is in response to the fact that NRC is conducting inspections focused on implementation and procedures of part 71 QA programs. Fees for all routine and nonroutine inspections conducted on or after the effective date of the final rule will be assessed on a per-inspection basis and will be billed quarterly based on the full cost of conducting the inspections. The inspection fees are payable upon notification by the Commission that they are due. Inspection costs would include preparation time, time on the site, documentation time, and any associated contractual services costs but would exclude the time involved in processing and issuing a notice of violation or a civil penalty. Fees for routine inspections of these programs are estimated to range from $6,000 to $22,000 based on information gathered on some of the previous inspections.

Fee Category 12, Special Projects, is revised to (1) eliminate the ceiling of $50,000 for topical report reviews and (2) provide for recovery of preapplication/licensing activities. Fees for these reviews will be based on full-cost recovery. The footnotes to § 170.31 are revised accordingly.

A new category 15, import and export licenses, is added in order to assess fees for the specific licenses issued by the NRC, pursuant to part 110, covering the import and export of special nuclear material, source material, byproduct material, heavy water (D_2O), tritium and nuclear grade graphite. Applications for import and export licenses received on or after the effective date of the final rule will become subject to the fees in part 170 including those route approvals that may be required in conjunction with an import license. In this final rule, two changes have been made to the category. First, heavy water, tritium and nuclear grade graphite have been added because the Commission issues specific licenses covering these items. Second, the fees have been changed to flat fees and must be remitted with the application for the license. This represents a change from the proposed rule where the fees were to be assessed based on the professional staff hours expended for the review of the application.

A new Category 16, reciprocity, is added to include an application fee of $600 to recover the costs expended by the Commission for the review of registrations (Form 241) which are filed by an Agreement State licensee indicating that the licensee intends to conduct activities in a non-Agreement State under the reciprocity provisions of § 150.20. Also included in the category is the reference to the inspection fees, which was a part of the proposed rule. Inspection fees will be assessed to those Agreement State licensees who are inspected by the NRC. The inspection fees assessed will be those inspection fees in § 170.31 for the fee category applicable to the license. These licensing and inspection fees are applicable to those applications filed with or inspections conducted by the NRC on or after the effective date of this final rule. The license fee represents a change from the proposed rule.

On October 16, 1986 (51 FR 36935), the NRC published a final rule in the **Federal Register** relating to 10 CFR part 35. As part of the final rule, the *in vivo* general license contained in § 35.31 was eliminated from the regulations. The Commission indicated that the former general licensees, all of whom were physicians, would receive a specific NRC license covering the clinical procedures authorized by the former general license. Eighty-nine new specific licenses were issued by the NRC in response to the applications received from the former general licensees. The Commission granted these specific licensees an exemption from part 170 application and renewal fees under 10 CFR 170.11(b) as long as the licensee's program was limited to the material uses described in § 35.31. The Commission will continue to honor that exemption from part 170 fees. However, these licensees are now subject to the new annual fees of part 171 (Category 7C) in that they will be expected to pay their share of the generic regulatory costs in order for the Commission to meet the statutory mandate of 100 percent recovery of its budget authority for FY 1991. Accordingly, these licensees will be billed annual fees in accordance with § 171.16 of these final regulations.

Part 171

Section 171.1 Purpose

This section is revised to include persons holding licenses to operate test and research reactors, facility and materials licenses, Certificates of Compliance, sealed source and device registrations, and approvals for QA programs who will be assessed an annual fee in addition to those persons licensed to operate a power reactor. These entities include those Government agencies that hold specific NRC licenses, approvals, certificates, or registrations.

Section 171.3 Scope

The scope of part 171 is expanded from any person holding a part 50 operating power reactor license, to any person holding a part 50 operating license, or a materials license, a holder of a Certificate of Compliance, a holder of a sealed source and device registration, or a holder of a Quality Assurance Program approval as defined in this part. A Government agency that holds any of these specific licenses, approvals, or certificates is also included within the scope of part 171.

Section 171.5 Definitions

The definitions of *Byproduct Material, Certificate Holder, Government Agency, High Enriched Uranium Fuel, Low Enriched Uranium Fuel, Materials*

License, Quality Assurance Program Approval, Registration Holder, Research Reactor, Source Material, Special Nuclear Material, and *Testing Facility* are added because these facilities and materials licensees, and holders of certificates, registrations, and approvals are subject to the appropriate annual fees in this part.

The definition of *Budget Authority* replaces the definition of *Budgeted Obligations* to clarify that the fees are based on the budget authority or the appropriation granted to the NRC for the FY by the Congress. The definition of *Overhead Costs* is revised to clarify that organizations previously excluded from the fee base are included because the Commission views these budgeted costs as support for all of its regulatory services provided to applicants, licensees, and certificate, registration and approval holders. These costs must be recovered in accordance with Public Law 101–508.

Section 171.11 Exemptions

A separate paragraph (a) has been added to provide for a specific exemption from annual fees for licenses issued to nonprofit educational institutions under certain conditions. The criteria for considering exemption requests from the annual fee for operating reactors will be continued. With respect to requests for exemption from the materials annual fees, the Commission proposes to set a high threshold for eligibility for any requested exemption. It is the Commission's expectation that exemptions will be rarely granted. To be considered for exemption, the licensee must provide the NRC clear and convincing evidence that the annual fee is not based on a fair and equitable allocation of the NRC costs. Factors that the NRC will consider in reaching a decision on exemptions are:

(1) Whether there are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee or class of licensees;

(2) Whether there is evidence that the generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decision; and

(3) Any other relevant matter that shows the annual fee was not based on a fair and equitable allocation of NRC costs.

Section 171.13 Notice

This section is revised to indicate that the amount of the annual fees for reactor and materials licensees would be published as a Notice in the **Federal Register** during the first quarter of FY 1992 through 1995 unless otherwise specified by the Commission. This requirement is consistent with past practice with respect to operating power reactors and with the requirement that the annual fees of less than $100,000 be paid once a year (during the first quarter of the FY). Those annual fees of $100,000 or more would be paid on a quarterly basis. If the Commission is unable to publish a notice during the first quarter of Fiscal Years 1992–1995, quarterly payments of the annual fees of $100,000 or more shall continue and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until such time as a Notice concerning the revised amount of the fees for the fiscal year are published by the Commission.

Section 171.15 Annual Fee: Reactor Operating Licenses

The section heading is revised to indicate that both power reactors and nonpower (test and research) reactors will be assessed annual fees. Section 171.15(a) is revised to include test and research reactors in addition to operating power reactors, and paragraphs (b) and (c) are revised to take into consideration the requirement of the Public Law to recover approximately 100 percent of the NRC budget. Paragraph (b) provides the basis for proposing a base annual fee to be assessed to each operating power reactor according to the principle that those licensees requiring the greatest expenditure of NRC resources will pay the greatest annual charge. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1991 budget mission areas and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1991 BUDGET TO POWER REACTORS BASE FEES [1]

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Reactor safety and safeguards regulation (RSSR):				
Power reactor applications reviews	$1400	15.9	$1400	15.9
Standard reactor designs reviews	1473	32.6	200	12.2
Other reviews	350	3.7	0	1.2
Reactor license renewal	1408	14.7	1408	14.7
Reactor performance evaluation	718	33.6	718	33.6
Evaluation of licensee performance	700	33.7	700	33.7
Reactor accident management	1000	11.3	1000	11.3
Human performance evaluation	650	3.2	650	3.2
Reactor operator examinations	6250	51.8	6010	48.8
Resident inspectors		190.7		190.7
Region-based inspections	5708	279.5	5708	274.3
Specialized inspections	3117	65.6	3117	65.6
Project management		133.4		133.4
Safety evaluation of licensing actions	9191	127.7	9191	127.7
Regulatory improvements	335	17.8	335	17.8
RSSR mission area total			$30,437	984.1
Nuclear safety research (NSR):				
Integrity of reactor components	$27230	21.5	$27230	21.5
Prevent damage to reactor cores	21675	32.0	21675	32.0
Reactor containment performance	17330	12.0	17330	12.0
Generic and USIs	3180	28.1	3180	28.1
Standard and advanced reactors	1825	6.0	1825	6.0

TABLE IV.—ALLOCATION OF NRC FY 1991 BUDGET TO POWER REACTORS BASE FEES [1]—Continued

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Fuel cycle/transportation/safeguards	1025	4.0	631	2.0
Developing and improving regulations	5065	15.0	5065	15.0
Severe accident implementation	2669	10.0	2669	10.0
Radiation protection/health effects	4600	11.0	3450	8.3
NSR mission area total			$83,055	134.9
Nuclear material and low level waste safety & safeguards regulation:				
Threat and event assessment/international safeguards	$430	12.8	$430	8.3
Decommissioning	1200	14 4	100	4.2
NMLLWSSR mission area total			$530	12.5
Special and independent reviews, investigations, and enforcement:				
Diagnostic Evaluations	$350	7.0	$350	7.0
Incident Investigations	50	3.0	50	3.0
NRC Incident Response	2200	27.0	2200	27.0
Operational Data Analysis	1973	25.0	1873	23.0
Performance Indicators	980	4.0	980	4.0
Operational Data Collection/Dissemination	2147	5.0	2147	5.0
SIRIE mission area total			$7600	69.0
TOTAL			$121,622	1,200.5
Total base fee amount allocated to power reactors—[2]$362.8 million				
Less estimated part 170 power reactor fees— —71.9 million				
Part 171—Base fees for operating power reactors—$290.9 million				

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1991 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment	$2,673,000
2. Beaver Valley 2	do	2,673,000
3. Braidwood 1	do	2,673,000
4. Braidwood 2	do	2,673,000
5. Byron 1	do	2,673,000
6. Byron 2	do	2,673,000
7. Callaway 1	do	2,673,000
8. Comanche Peak 1	do	2,673,000
9. Diablo Canyon 1	do	2,659,000
10. Diablo Canyon 2	do	2,659,000
11. Farley 1	do	2,673,000
12. Farley 2	do	2,673,000
13. Ginna	do	2,673,000
14. Haddam Neck	do	2,673,000
15. Harris 1	do	2,673,000
16. Indian Point 2	do	2,673,000
17. Indian Point 3	do	2,673,000
18. Kewaunee	do	2,673,000
19. Millstone 3	do	2,673,000
20. North Anna 1	do	2,673,000
21. North Anna 2	do	2,673,000
22. Point Beach 1	do	2,673,000
23. Point Beach 2	do	2,673,000
24. Prairie Island 1	do	2,673,000
25. Prairie Island 2	do	2,673,000
26. Robinson 2	do	2,673,000
27. Salem 1	do	2,673,000
28. Salem 2	do	2,673,000
29. San Onofre 1	do	2,659,000
30. Seabrook 1	do	2,673,000
31. South Texas 1	do	2,673,000
32. South Texas 2	do	2,673,000
33. Summer 1	do	2,673,000
34. Surry 1	do	2,673,000
35. Surry 2	do	2,673,000
36. Trojan	do	2,659,000
37. Turkey Point 3	do	2,673,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
38. Turkey Point 4	do	2,673,000
39. Vogtle 1	do	2,673,000
40. Vogtle 2	do	2,673,000
41. Wolf Creek 1	do	2,673,000
42. Zion 1	do	2,673,000
43. Zion 2	do	2,673,000
44. Catawba 1	PWR—Ice Condenser	2,658,000
45. Catawba 2	do	2,658,000
46. Cook 1	do	2,658,000
47. Cook 2	do	2,658,000
48. McGuire 1	do	2,658,000
49. McGuire 2	do	2,658,000
50. Sequoyah 1	do	2,658,000
51. Sequoyah 2	do	2,658,000
Combustion Engineering:		
1. Arkansas 2	PWR Large Dry Containment	2,658,000
2. Calvert Cliffs 1	do	2,658,000
3. Calvert Cliffs 2	do	2,658,000
4. Ft. Calhoun 1	do	2,658,000
5. Maine Yankee	do	2,658,000
6. Millstone 2	do	2,658,000
7. Palisades	do	2,658,000
8. Palo Verde 1	do	2,644,000
9. Palo Verde 2	do	2,644,000
10. Palo Verde 3	do	2,644,000
11. San Onofre 2	do	2,644,000
12. San Onofre 3	do	2,644,000
13. St. Lucie 1	do	2,658,000
14. St. Lucie 2	do	2,658,000
15. Waterford 3	do	2,658,000
Babcock & Wilcox:		
1. Arkansas 1	do	2,658,000
2. Crystal River 3	do	2,658,000
3. Davis Besse 1	do	2,658,000
4. Oconee 1	do	2,658,000
5. Oconee 2	do	2,658,000
6. Oconee 3	do	2,658,000
7. Three Mile Island 1	do	2,658,000
General Electric		
1. Browns Ferry 1	Mark I	2,648,000
2. Browns Ferry 2	do	2,648,000
3. Browns Ferry 3	do	2,648,000
4. Brunswick 1	do	2,648,000
5. Brunswick 2	do	2,648,000
6. Clinton 1	Mark III	2,873,000
7. Cooper	Mark I	2,648,000
8. Dresden 2	do	2,648,000
9. Dresden 3	do	2,648,000
10. Duane Arnold	do	2,648,000
11. Fermi 2	do	2,648,000
12. Fitzpatrick	do	2,648,000
13. Grand Gulf 1	Mark III	2,873,000
14. Hatch 1	Mark I	2,648,000
15. Hatch 2	do	2,648,000
16. Hope Creek 1	do	2,648,000
17. LaSalle 1	Mark II	2,664,000
18. LaSalle 2	do	2,664,000
19. Limerick 1	do	2,664,000
20. Limerick 2	do	2,664,000
21. Millstone 1	Mark I	2,648,000
22. Monticello	do	2,648,000
23. Nine Mile Point 1	do	2,648,000
24. Nine Mile Point 2	Mark II	2,664,000
25. Oyster Creek	Mark I	2,648,000
26. Peach Bottom 2	do	2,648,000
27. Peach Bottom 3	do	2,648,000
28. Perry 1	Mark III	2,873,000
29. Pilgrim	Mark I	2,648,000
30. Quad Cities 1	do	2,648,000
31. Quad Cities 2	do	2,648,000
32. River Bend 1	Mark III	2,873,000
33. Susquehanna 1	Mark II	2,664,000
34. Susquehanna 2	do	2,664,000
35. Vermont Yankee	Mark I	2,648,000
36. Washington Nuclear 2	Mark II	2,650,000
Other Reactors:		
1. Three Mile Island 2	B&W PWR-Dry Containment	2,658,000
2. Rancho Seco	do	2,644,000
3. Big Rock Point	GE Dry Containment	2,648,000
4. Shoreham	GE Mark II	2,664,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
5. Yankee Rowe	Westinghouse PWR Dry Containment	2,673,000
6. Ft. St. Vrain	High Temperature Gas Cooled	2,155,000

The "Other Reactors" listed in Table V have not been included in the fee base. With respect to Big Rock Point and Yankee Rowe, the Commission in this final rule hereby grants partial exemptions from the FY 1991 annual fees based on requests filed with the Commission in accordance with § 171.11. The total amount of $733,000 to be paid by the two licensees has been subtracted from the total amount to be assessed operating power reactors as a surcharge. The Commission, in this final rule, hereby grants full exemptions from the FY 1991 annual fees to Ft. St. Vrain, Rancho Seco, Shoreham, and Three Mile Island 2 based on the fact that these reactors are either permanently or prematurely shutdown and do not intend to operate in the future.

Consistent with past policy and practice, if an applicant receives its operating license during the year, it will pay only a prorated annual fee for that year in accordance with the provisions of § 171.17. Fees will continue to be collected under part 170 up to the time of issuance of the OL.

Paragraph (c) is revised to assess an additional charge, which will be added to the base annual fee for each operating power reactor shown in Table V, and to provide the method for calculating the additional charge. This charge will recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors, but nevertheless must be recovered to comply with the requirements of the Public Law. The Commission has made a policy decision to recover these costs from operating power reactors.

The FY 1991 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of costs	FY 1991 budgeted costs (dollars in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. reviews for DOE/DOD reactor projects, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions	$3.7
b. international cooperative safety program and international safeguards activities	4.9
c. 60% of low level waste disposal generic activities; and	6.0
d. uranium enrichment activities	1.1
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy:	
a. licensing and inspection of nonprofit educational institutions; and	2.2
b. cost not recovered from Part 171 for small entities	4.3
3. Standard reactor design approval and certification reviews (FY 1991 only)	5.4
4. Export and import licensing activities (FY 1991 only)	1.3
Subtotal	$28.9
Less amount to be assessed to small, older reactors with partial exemption under Part 171	−.7
Total budgeted costs	$28.2

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating power reactors}} = \frac{\$28.2 \text{ million}}{109} = \$259{,}000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,673,000 and an additional charge of $259,000 for a total annual fee of $2,932,000 for FY 1991.

A new paragraph (d) is added that shows, in summary form, the amount of the total FY 1991 annual fee, including the added charge, to be assessed for each major type of operating power reactor.

Paragraphs (e) and (f) are added which show the amount of the FY 1991 annual fee for non-power (test and research) reactors and indicate that for FY 1992–1995 the annual fees for operating reactors will be calculated and assessed in accordance with § 171.13. In FY 1991, $500,000 in costs are attributable to those commercial and Federal government licensees that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors which are not exempt from fees results in an annual fee of $50,000 per operating license.

Section 171.16 Annual fees: Materials licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

Paragraphs (a), (b), (c), (d), and (e) are added and establish annual fees for materials licensees, including Government agencies licensed by the NRC. Paragraph (a) indicates those persons who would be subject to the annual fees. Paragraph (b) provides the

basis upon which the base annual fees will be determined. Paragraph (c) provides the criteria whereby a licensee, who qualifies as a small entity under the Commission's regulations, may pay a reduced annual fee established for a small entity. Paragraph (d) is a listing of the annual fees to be assessed. These fees are necessary to recover the FY 1991 generic costs totalling $46.0 million applicable to fuel facilities, uranium recovery facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and material users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For transportation, the costs are those budgeted for transportation research, licensing and inspection. Likewise the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1991 BUDGET TO FUEL FACILITY BASE FEES [1]

Total program element	Program support $,K	FTE	Allocated to fuel facility	Program support $,K FTE
Nuclear safety research:				
Fuel cycle/transportation/safeguards	$1025	4.0	$50	0.5
Rad. protection/health effects	4600	2.0	101	0.3
NSR mission area total			$151	0.8
Nuclear material and low level waste safety and safeguards regulation:				
Fuel facilities/spent fuel	$2730	39.1	$1390	31.2
Event evaluation		16.8		3.4
Safeguards licensing/inspection	775	21.2	655	16.8
Decommissioning	1200	14.4	220	2.0
NMLLWSSR mission area total			$2,265	53.4
Total			$2,416	54.2
Total base fee amount allocated to fuel facilities—[2] $13.3 million				
Less part 170 fuel facility fees— −2.7 million				
Part 171—base fees for fuel facilities—$10.6 million				

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1991 BUDGET TO MATERIAL USERS BASE FEES [1]

	Total		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Nuclear Safety Research Mission Area:				
Radiation Protection/Health Effects	$4600	11.0	$1049	2.5
Nuclear Material & Low Level Waste Safety & Safeguards Regulation:				
Licensing/Inspection of Materials Users	2172	105.3	2154	104.4
Event Evaluation		16.8		13.4
Decommissioning	1200	14.4	880	7.0
NMLLWSSR Mission Area Total	3372	136.5	3034	124.8
Special and Independent Reviews, Investigations, and Enforcement:				
Operational Data Analysis(PE)	1973	25	100	2.0
Total			4,183	129.3
Base Amount Allocated to Materials Users (millions)				[2] $30.2
Less Part 170 Material Users Fees (millions)				−3.0
Part 171 Base Fees for Material Users (millions)				27.2

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $10.6 million in budgeted costs to the individual fuel facilities is based primarily on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Since the three high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC generic safety and safeguards costs (e.g., physical security) are attributable to these facilities.

Using this approach, the base annual fee for each facility is shown below.

	Annual fee (dollars in thousands)		
	Safeguards	Safety	Total
High Enriched Fuel:			
United Nuclear Corporation	$750	$750	$1,500
Nuclear Fuel Services	750	750	1,500
Babcock and Wilcox	750	750	1,500
Subtotal	2,250	2,250	4,500
Low Enriched Fuel:			
Advanced Nuclear Fuels	156	537	693
Babcock and Wilcox	156	537	693
General Electric	156	537	693
Westinghouse	156	537	693
Combustion Engineering (Hematite)	156	537	693
Combustion Engineering (Windsor)	156	537	693
Subtotal	936	3,222	4,158
UF_6 Conversion:			
Allied Signal Corp	—	540	540
Sequoyah Fuels Corp	—	540	540
Subtotal	—	1,080	1,080
Other fuel facilities (9 facilities at $100,000 each)	—	900	900
Total	3,186	7,452	10,638

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that 90% of the $1.9 million for uranium recovery is attributable to uranium mills in operation, standby, or with reclamation plans under review, and in-situ leach facilities (Class I facilities). The remaining 10% would be allocated to the other uranium recovery facilities (e.g. R&D in-situ leach projects, secondary recovery operations and heap-leach operations). The resulting annual fees for each class of licensee are:

Class I facilities $100,000
Other facilities $67,000

For spent fuel storage licenses, the Commission is changing the final rule. Based on the comments received, as indicated in section III of this final rule, the proposed fee structure would result in unintended effects on the implementation of the new part 72 rule. That is, instead of applying for a Certificate of Compliance, vendors would apply for a topical report approval in order to avoid the annual fee. This would result in shifting the fee to the specific ISFSI licensees. Therefore, the Commission will charge the generic costs of $1.5 million uniformly to those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in a revised annual fee of $375,000. Fee Category 13 of § 171.16 has been modified to include annual fees for general licenses for storage of spent fuel under § 72.210 of part 72 of this chapter.

To equitably and fairly allocate the $27.2 million attributable to the approximately 9,000 diverse material users and registrants, the annual fee was based on the part 170 new application and routine inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach provided a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also considered the inspection frequency, because the inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for each category of license is developed as follows:

Annual Fee = (Application Fee + Inspection Fee/Inspection Priority) × Constant + (Unique Category Costs)

The constant is the multiple necessary to recover $27.2 million and is 2.4 for FY 1991. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1991, unique costs of $2.4 million were identified for the medical improvement program which is attributable to medical licensees. Materials licensees may pay a reduced fee if they certify on NRC Form 526 that they are a small entity.

To recover the $4.8 million attributable to the transportation class of licensees, $1.2 million will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under new Category 18. The remaining transportation costs ($3.6 million) for generic activities are allocated to holders of approved QA plans. The annual fee for approved QA plans is $29,000 for users and fabricators and $1,700 for users only.

The amount or range of the base annual fees for all material licensees is summarized as follows:

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$1.5 million.
Part 70—Low enriched fuel.	$693,000.
Part 40—UF_6 conversion	$540,000.
Part 40—Uranium recovery.	$67,000 to $100,000.
Part 30—Byproduct Material.	[1]$290 to $10,700.
Part 71—Transportation of Radioactive Material.	$1,700 to $29,000.
Part 72—Independent Storage of Spent Nuclear Fuel.	$375,000.

[1] Does not consider the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies which is $200,000.

If a person holds more than one license, certificate, registration, or approval, the annual fee is the cumulative total of annual fees applicable to the licenses, certificates, registrations or approvals held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the same license. Government agencies licensed by the NRC will pay the annual fee for the particular fee category(ies) applicable to the license, certificate,

registration or approval, except for those Federal military agencies to which the NRC has granted a "Master" materials license (broad-scope license covering multiple activities performed at multiple locations), in which case the annual fee for fee Category 17 is applicable.

Paragraph (e) establishes an additional charge which is added to the base annual fees shown in Paragraph (d) of this final rule. This surcharge has been shown, for convenience, with the applicable categories in paragraph (d). The additional charge will recover approximately 40 percent of the NRC budgeted costs of $9.8 million relating to LLW disposal generic activities because 40 percent of the LLW is generated by these licensees. Although these NRC LLW disposal regulatory activities are not directly attributable to materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of the Public Law. The Commission has made a policy decision to recover approximately 40 percent of these LLW costs from materials licensees. The FY 1991 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of costs	FY 1991 budgeted costs (dollars in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., 40% of LLW disposal generic activities	$3.8

Of the $3.8 million budgeted costs shown above for LLW activities, 50 percent of the amount ($1.9 million) would be allocated to fuel facilities included in part 171 (20 facilities), as follows: $143,400 per HEU, LEU and UF_6 facility and $35,800 for the other 9 fuel facilities. The remaining 50 percent ($1.9 million) would be allocated to the material licensees in categories that generate low level waste (1,229 licensees) as follows: $1,400 per materials licensee except for those in Categories 4A and 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for Categories 4A and 17, which also generate and/or dispose of low level waste, is $35,800 for Category 4A and $22,500 for Category 17. Based on comments received, Categories 2.A.(2) and 7C have been deleted in this final rule and will not be subject to the surcharge because the low level waste generated by these licensees is either held for decay and disposed of through incineration or normal trash removal, or disposed of on site.

Of the $4.9 million not recovered from small entities, $0.6 million would be allocated to fuel facilities and other materials licensees. This results in a surcharge of $100 per category for each licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility, a high enriched fuel fabrication licensee, for example, would pay a base annual fee of $1,500,000 and an additional charge of $143,500 for LLW activities and small entity costs. A medical center with a broad-scope program would pay a base annual fee of $8,400 and an additional charge of $1,500, for a total annual fee of $9,900 for FY 1991.

Section 171.17 Proration

This section is revised to indicate that only the annual fees for operating power reactors that may be issued a license during the FY will be prorated depending on when the license is issued. The annual fee for all other licenses, certificates and registrations, and QA program approvals issued during the year will not be prorated. Annual fees for these licenses, certificates and registrations, and QA program approvals will be assessed only for those licenses and approvals in effect on October 1 each fiscal year: For FY 1991, those licenses, certificates, and registrations, and QA program approvals in effect on the effective date of the final rule will be assessed an annual fee. Licenses, certificates, registrations, and approvals issued during FY 1992, for example, will be assessed an annual fee in the subsequent FY. For materials licensees, this system will reduce the NRC's administrative burden of tracking the numerous licenses, certificates, registrations, and approvals issued during the FY.

Section 171.19 Payment

This section is revised in its entirety. Paragraph (a) indicates the method of payment to be used in paying the annual fees and is consistent with the existing payment provisions for the current fee schedules in part 170. For FY 1992 through 1995, annual fees of less than $100,000 are to be paid once a year during the first quarter of the FY as billed by the NRC because of the large number of licensees and the relatively small amount of these bills. Annual fees of $100,000 or more will be billed and paid quarterly. For FY 1992 only, the NRC will defer the due date of the first quarterly bills for annual fees greater than $100,000 and total bills for annual fees less than $100,000 until the second quarter of FY 1992.

The NRC anticipates that the first, second, and third quarterly payments for FY 1991 will have been made by operating power reactor licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee. For those fuel cycle licensees, material licensees, and holders of certificates, registrations, and QA program approvals that are subject to the annual fees for the first time in FY 1991, the NRC will send a bill for the full amount of the annual fee to the licensee, or certificate, registration, or approval holder upon publication of the final rule. Payment is due on the effective date of the rule and interest shall accrue from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

Section 171.23 Enforcement

This section is amended in its entirety to indicate that submitting an inaccurate certification to the Commission with respect to qualifying as a small entity under the Regulatory Flexibility Criteria may result in (1) the suspension or revocation of any licenses held by the person and (2) punitive action pursuant to 18 U.S.C. 1001.

Section 171.25 Collection of Interest, Penalties, and Administrative Costs

This section is amended to include all annual fees assessed in accordance with §§ 171.15 and 171.16.

VI. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for this final regulation.

VII. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VIII. Regulatory Analysis

With respect to part 170, this final rule was developed pursuant to title V of the

Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied* 444 U.S. 1102 (1980). The Court held that (1) the NRC had the authority to recover the full cost of providing services to identifiable beneficiaries; (2) the NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations; (3) the NRC could charge for costs incurred in conducting environmental reviews required by NEPA; (4) the NRC properly included in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (5) the NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and (6) the NRC's fees were not arbitrary or capricious.

With respect to part 171, Public Law 101–239 required the NRC to establish annual fees for regulatory services provided to its applicants and licensees that, when added to other amounts collected, equaled 33 percent of the Commission's costs of providing those services for FY 1991. On August 17, 1990, the NRC published in the **Federal Register** (55 FR 33789) the annual fees for FY 1991 based on the Public Law. On November 5, 1990, the Congress amended the Public Law. For FYs 1991 through 1995, Public Law 101–508 requires that approximately 100 percent of the NRC budget authority be recovered. To accomplish this statutory requirement, the NRC, in accordance with 10 CFR 171.13, is publishing the final amount of the FY 1991 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. This Public Law and the Conference Report specifically state that (1) the annual fees will be based on the Commission's FY 1991 budget of $465 million less the amounts collected from part 170 fees and the funds directly appropriated from the NWF to cover the Commission's high level waste program; (2) the annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and (3) the annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. Therefore, when developing the revised annual fees for operating power reactors the Commission continues to consider the various reactor vendors, the types of containment, and the location of the reactor. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986, was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 109 S. Ct. 1952 (1989).

10 CFR parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.,* 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light,* all of the lawsuits were withdrawn.

IX. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover 100 percent of its budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the new schedules of fees that are necessary to implement this Congressional mandate. The final rule results in an increase in the fees charged to all licensees, and holder of certificates, registrations, and approvals including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as appendix A to this document.

X. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 71

Criminal penalties, Hazardous materials—transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Intergovernmental relations, Non-payment penalties, Nuclear materials,

Nuclear power plants and reactors, Source material, Special nuclear material, Holders of certificates, registrations, approvals, Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 52, 71, 170, and 171.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER REACTORS

1. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956 as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); sec. 201, 202, 206, 68 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. Section 52.19 is revised to read as follows:

§ 52.19 Permit and renewal fees.

The fees charged for the review of an application for the initial issuance or renewal of an early site permit are set forth in 10 CFR 170.21 and shall be paid in accordance with 10 CFR 170.12.

3. Section 52.49 is revised to read as follows:

§ 52.49 Fees for review of applications.

The fee charged for the review of an application for the initial issuance or renewal of a standard design certification are set forth in 10 CFR 170.21 and shall be paid in accordance with 10 CFR 170.12.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

4. The authority citation for part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 71.3, 71.43, 71.45, 71.55, 71.63 (a) and (b), 71.83, 71.85, 71.87, 71.89, and 71.97 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.6a, 71.91, 71.93, 71.95, and 71.101(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 71.0, paragraph (c) is revised to read as follows:

§ 71.0 Purpose and scope.

* * * * *

(c) The regulations in this part apply to any certificate holder and to any licensee authorized by specific license issued by the Commission to receive, possess, use, or transfer licensed material if the licensee or certificate holder delivers that material to a common or contract carrier for transport or transports the material outside the confines of the licensee's or certificate holder's facility, plant, or other authorized place of use. No provision of this part authorizes possession of licensed material.

* * * * *

6. In § 71.4, add the definition of "certificate holders" to read as follows:

§ 71.4 Definitions.

* * * * *

Certificate holder means a person who holds a certificate of compliance, or other package approval issued by the Commission.

* * * * *

7. In § 71.93, paragraph (a) is revised to read as follows:

§ 71.93 Inspection and tests.

(a) The licensee or certificate holder shall permit the Commission at all reasonable times to inspect the licensed material, packaging, premises, and facilities in which the licensed material or packaging is used, provided, constructed, fabricated, tested, stored, or shipped.

* * * * *

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

8. The heading for 10 CFR part 170 is revised to read as set forth above.

9. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

10. In § 170.2, paragraphs (o), (p) and (q) are added to read as follows:

§ 170.2 Scope.

* * * * *

(o) Requesting preapplication/licensing review assistance by consulting with the NRC and/or by filing preliminary analyses, documents, or reports.

(p) An applicant for or a holder of a specific import or export license issued pursuant to 10 CFR part 110.

(q) An Agreement State licensee who files for or is holder of a general license under the reciprocity provisions of 10 CFR 150.20.

11. In § 170.3, the definitions "Act", "Agreement State" "High Enriched Uranium" and "Low Enriched Uranium" are added to read as follows:

§ 170.3 Definitions.

* * * * *

Act means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto;

* * * * *

Agreement State means any State with which the Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Act. "Nonagreement State" means any other State.

* * * * *

High Enriched Uranium means uranium enriched to 20 percent or greater in the isotope uranium-235.

* * * * *

Low Enriched Uranium means uranium enriched below 20 percent in the isotope uranium-235.

* * * * *

§ 170.11 [Amended]

12. In § 170.11, paragraphs (a)(1), (a)(2), (a)(8), (a)(9), and (a)(11) are removed and reserved.

13. In § 170.12 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) *License fees.*

(1) Fees for applications for materials licenses not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and costs related to each.

(c) *Amendment fees and other required approvals.* (1) Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full

cost recovery are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed except for those costs relating to amendments and other approvals for early site permits which were deferred prior to the effective date of this final rule. These costs will be billed in a deferred manner consistent with that addressed in paragraph (d)(4) of this section. Each bill will identify the applications and costs related to each.

(d) *Renewal fees.* (1) Renewal fees for material licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for renewals that are subject to the full cost of the review are payable upon notification by the Commission. Except for those costs deferred prior to the effective date of this final rule, as noted in paragraph (d)(3) and (d)(4) of this section, each applicant will be billed at six-month intervals for all accumulated costs for each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each.

(3) Costs for review of an application for renewal of a standard design certification which have been deferred prior to the effective date of this final rule shall be paid as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the entity shall pay the installment. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the application for renewal, or remainder of those costs, at that time.

(4) Costs for the review of an application for renewal of an early site permit which have been deferred prior to the effective date of this rule will continue to be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(e) *Approval fees.* (1) Fees for applications for materials approvals that are not subject to full cost recovery must accompany the application when it is filed. Fees for applications or preapplication consultations and reviews subject to full cost are payable upon notification by the Commission. Each applicant will be billed at six month intervals until the review is completed. Each bill will identify the applications and the costs related to each.

(2)(i) The full cost of review for a standardized design approval or certification that has been deferred prior to the effective date of this final rule must be paid by the holder of the design approval, the applicant for certification, or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the approved/certified design is referenced in an application for a construction permit, combined license issued under 10 CFR part 52, or operating license. In the case of a standard design certification, the applicant for certification shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

(ii)(A) In the case of a design which has been approved but not certified and for which no application for certification is pending, if the design is not referenced, or if all costs are not recovered, within five years after the date of the preliminary design approval (PDA) or the final design approval (FDA), the applicant shall pay the costs, or remainder of those costs, at that time;

(B) In the case of a design which has been approved and for which an application for certification is pending, no fees are due until after the certification is granted. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of certification, the applicant shall pay the costs, or remainder of those costs, at that time.

(C) In the case of a design for which a certification has been granted, if the design is not referenced, or if all costs are not recovered, within fifteen years after the date of the certification, the applicant shall pay the costs for the review of the application, or remainder of those costs, at that time.

* * * * *

14. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1991 budget is $115 per hour. For FY 1992 through 1995, the professional staff-hour rate will be published as a Notice in the **Federal Register** during the first quarter of each fiscal year.

15. Section 170.21 is amended by removing footnotes 4 and 5, revising the section heading, the introductory text to the section, Category J and footnote 2 and by adding a new Category K to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and types of fees	Fees [1,2]
* * * * *	
J. Special projects:	
Approvals and preapplication/licensing activities.	Full Cost.
Inspections	Full Cost.

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and types of fees	Fees [1,2]
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110.	
Production and utilization facility or major components.	
Application	$7,000.
Amendment	$1,200.
Other production and utilization facility components:	
Application	$3,600.
Amendment	$580.

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, and July 2, 1990, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

16. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$500.
Renewal	$500.
Amendment	$380.
Inspections:	
Routine	$460.
Nonroutine	$1,300.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$690.
Renewal	$690.
Amendment	$230.
Inspections:	
Routine	$690.
Nonroutine	$800.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
2. Source material:	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for possession and use of source material for shielding:	
Application—New license	$110.
Renewal	$110.
Amendment	$110.
Inspections:	
Routine	$290.
Nonroutine	$350.
C. All other source material licenses:	
Application—New license	$790.
Renewal	$750.
Amendment	$450.
Inspections:	
Routine	$800.
Nonroutine	$1,500.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,300.
Renewal	$1,400.
Amendment	$230.
Inspections: [5]	
Routine	$2,100.
Nonroutine	$2,100.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,300.
Renewal	$2,300.
Amendment	$550.
Inspections: [5]	
Routine	$1,000.
Nonroutine	$2,000.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or § 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,400.
Renewal	$1,400.
Amendment	$460.
Inspections:	
Routine	$1,400.
Nonroutine	$1,900.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or § 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,100.
Renewal	$500.
Amendment	$310.
Inspections:	
Routine	$800.
Nonroutine	$1,200.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$500.
Renewal	$480.
Amendment	$250.
Inspections:	
Routine	$460.
Nonroutine	$690.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$1,200.
Renewal	$400.
Amendment	$350.
Inspections:	
Routine	$580.
Nonroutine	$1,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$4,600.
Renewal	$1,900.
Amendment	$460.
Inspections:	
Routine	$1,000.
Nonroutine	$1,400.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,100.
Renewal	$1,100.
Amendment	$250.
Inspections:	
Routine	$690.
Nonroutine	$690.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,600.
Renewal	$1,200.
Amendment	$350.
Inspections:	
Routine	$460.
Nonroutine	$690.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$2,500.
Renewal	$580.
Amendment	$390.
Inspections:	
Routine	$690.
Nonroutine	$690.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,900.
Renewal	$940.
Amendment	$290.
Inspections:	
Routine	$690.
Nonroutine	$690.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$2,300.
Renewal	$2,000.
Amendment	$500.
Inspections:	
Routine	$930
Nonroutine	$1,200.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,100.
Renewal	$1,100.
Amendment	$630.
Inspections:	
Routine	$800.
Nonroutine	$930.
N. Licenses that authorize services for other licensees, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	$1,400.
Renewal	$800.
Amendment	$400.
Inspections:	
Routine	$690.
Nonroutine	$690.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,000.
Renewal	$1,800
Amendment	$490.
Inspections: [5]	
Routine	$1,200.
Nonroutine	$2,500.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$500.
Renewal	$500.
Amendment	$380.
Inspections:	
Routine	$1,200.
Nonroutine	$1,200.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,800.
Renewal	$1,900
Amendment	$200.
Inspections:	
Routine	$2,100.
Nonroutine	$1,600.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,900.
Renewal	$930.
Amendment	$230.
Inspections:	
Routine	$1,600.
Nonroutine	$2,100.
5 Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,400.
Renewal	$2,000.
Amendment	$540.
Inspections:	
Routine	$800.
Nonroutine	$800.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
Inspections:	
Routine	$690.
Nonroutine	$1,000.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$1,400.
Renewal	$1,400.
Amendment	$350.
Inspections:	
Routine	$1,200.
Nonroutine	$1,900.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,400.
Renewal	$790.
Amendment	$430.
Inspections:	
Routine	$1,200.
Nonroutine	$1,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,300.
Renewal	$2,000.
Amendment	$360.
Inspections:	
Routine	$1,600.
Nonroutine	$1,800.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$710.
Renewal	$1,000.
Amendment	$430.
Inspections:	
Routine	$1,000.
Nonroutine	$1,500.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$580.
Renewal	$400.
Amendment	$310.
Inspections:	
Routine	$690.
Nonroutine	$690.
9. Device, product or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,300.
Amendment—each device	$1,200.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices:	
Application—each device	$1,600.
Amendment—each device	$580.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$690.
Amendment—each source	$230.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:	
Application—each source	$350.
Amendment—each source	$110.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	$230.
Renewal	$230.
Amendment	$230.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects:	
Approvals and preapplication/licensing activities.	Full Cost.
Inspections	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions and supplements.	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter:	
Routine	Full Cost.
Nonroutine	Full Cost.
14. Byproduct, source or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70 and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspection:	
Routine	Full Cost.
Nonroutine	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
a. High enriched uranium	
Application	$7,000.
Amendment	$1,200.
b. Low enriched uranium, source material, byproduct material, heavy water (D_2O) or nuclear grade graphite.	
Application	$3,600.
Amendment	$580.
c. All other export licenses/approvals	
Application	$920.
Amendment	$580.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (each filing of Form 241).	$600.
Renewal	N/A.
Amendment	N/A.
Inspections:	
Routine and nonroutine	Fees as specified in appropriate fee categories in this section.

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A and 14) are due upon notification by the Commission in accordance with § 170.12 (b), (e) and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 to which any applicable contractual support services costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.204 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, and July 2, 1990, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC

17. The heading for 10 CFR part 171 is revised to read as set forth above:

18. The authority citation for part 171 is revised to read as follows:

Authority: Section 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 42 U.S.C. 2201(w); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841).

19. Section 171.1 is revised to read as follows:

§ 171.1 Purpose.

The regulations in this part set out the annual fees charged to persons who hold licenses, Certificates of Compliance, sealed source and device registrations, and quality assurance program approvals issued by the United States Nuclear Regulatory Commission, including licenses, registrations,

approvals, and certificates issued to a Government agency.

20. Section 171.3 is revised to read as follows:

§ 171.3 Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter. These regulations also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

21. In § 171.5, remove the definitions "Budgeted Obligations" and "Overhead Costs" and add the definitions of "Budget Authority," "Byproduct Material," "Certificate Holder," 'Government Agency," "High Enriched Uranium Fuel," "Low Enriched Uranium Fuel," "Materials License," "Overhead and General and Administrative Costs," "Quality Assurance Program Approval," "Registration Holder," "Research Reactor," "Source Material," "Special Nuclear Material," and "Testing Facility," to read as follows:

§ 171.5 Definitions.

* * * * *

Budget Authority means the authority, in the form of appropriations, provided by law and becoming available during the year, to enter into obligations that will result in immediate or future outlays involving Federal government funds. The appropriation is an authorization by an Act of Congress that permits the NRC to incur obligations and to make payments out of the Treasury for specified purposes. Fees assessed pursuant to Public Law 101–508 are based on NRC budget authority.

Byproduct Material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

Certificate Holder means a person who holds a certificate of compliance, or other package approval issued by the Commission.

* * * * *

Government Agency means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

High Enriched Uranium Fuel means uranium enriched to 20 percent or greater in the isotope uranium–235.

Low Enriched Uranium Fuel means uranium enriched below 20 percent in the isotope uranium–235.

Materials License means a byproduct material license issued pursuant to part 30 of this chapter, a source material license issued pursuant to part 40 of this chapter, or a special nuclear material license issued pursuant to part 70 of this chapter or a license for the storage of spent fuel issued pursuant to part 72 of this chapter.

* * * * *

Overhead and General and Administrative costs means:

(1) The Government benefits for each employee such as leave and holidays, retirement and disability benefits, health and life insurance costs, and social security costs;

(2) Travel costs;

(3) Direct overhead, e.g., supervision and support staff that directly support the NRC safety mission areas (administrative support costs, e.g., rental of space, equipment, telecommunications and supplies); and

(4) Indirect costs that would include, but not be limited to, NRC central policy direction, legal and executive management services for the Commission and special and independent reviews, investigations, and enforcement and appraisal of NRC programs and operations.

Some of the organizations included are the Commissioners, Secretary, Executive Director for Operations, General Counsel, Government and Public Affairs (except for international safety and safeguards programs), Inspector General, Investigations, Enforcement, Small and Disadvantaged Business Utilization and Civil Rights, the Technical Training Center, Advisory Committees on Nuclear Waste and Reactor Safeguards, and the Atomic Safety and Licensing Board Panel and Appeal Panel. The Commission views these budgeted costs as support for all its regulatory services provided to applicants, licensees, and certificate holders, and these costs must be recovered pursuant to Public Law 101–508.

* * * * *

Quality Assurance Program Approval is the document issued by the NRC to approve the quality assurance program submitted to the NRC as meeting the requirements of § 71.101 of this chapter. Activities covered by the quality assurance program may be divided into two major groups: those activities including design, fabrication and use of packaging and those activities for use only of packaging.

Registration Holder as used in this part means any manufacturer or initial distributor of a sealed source or device containing a sealed source that holds a certificate of registration issued by the NRC or a holder of a registration for a sealed source or device manufactured in accordance with the unique specifications of, and for use by, a single applicant.

Research Reactor means a nuclear reactor licensed by the Commission under the authority of subsection 104c of the Act and pursuant to the provisions of § 50.21(c) of this chapter for operation at a thermal power level of 10 megawatts or less, and which is not a testing facility as defined in this section.

Source Material means:

(1) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) Ores which contain by weight one-twentieth of one percent (0.05%) or more of

(i) Uranium,

(ii) Thorium, or

(iii) Any combination thereof.

Source material does not include special nuclear material.

Special Nuclear Material means:

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

Testing Facility means a nuclear reactor licensed by the Commission under the authority of subsection 104c of the Act and pursuant to the provisions of § 50.21(c) of this chapter for operation at:

(1) A thermal power level in excess of 10 megawatts; or

(2) A thermal power level in excess of 1 megawatt, if the reactor is to contain:

(i) A circulating loop through the core in which the applicant proposes to conduct fuel experiments; or

(ii) A liquid fuel loading; or

(iii) An experimental facility in the core in excess of 16 square inches in cross-section.

22. Section 171.11 is revised to read as follows:

§ 171.11 Exemptions.

(a) An annual fee will not be assessed for a construction permit or license

applied for by, or issued to, a nonprofit educational institution for a production or utilization facility, other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source or special nuclear material licenses which authorize:

(1) Human use;

(2) Remunerated services to other persons;

(3) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; and

(4) Activities performed under a Government contract.

(b) The Commission may, upon application, grant an exemption, in part, from the annual fee required pursuant to this part. However, filing an exemption request does not extend the date on which the bill is payable, and only timely payment in full will ensure avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded.

(c) An exemption for reactors under this provision may be granted by the Commission taking into consideration each of the following factors:

(1) Age of the reactor;

(2) Size of the reactor;

(3) Number of customers in rate base;

(4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and

(5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

(d) The Commission may grant a materials licensee an exemption from the annual fee only if it determines that the annual fee is not based on a fair and equitable allocation of the NRC costs. It is the intention of the Commission that such exemptions will be rarely granted. The following factors must be fulfilled as determined by the Commission for an exemption to be granted:

(1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees;

(2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decision; and

(3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

23. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** during the first quarter of FY 1992 through 1995 unless otherwise specified by the Commission. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. If the Commission is unable to publish a notice during the first quarter of Fiscal Years 1992–1995, quarterly payments of the annual fees of $100,000 or more shall continue and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until such time as a notice concerning the revised amount of the fees for the fiscal year is published by the Commission.

24. Section 171.15 is revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a).

(b) A base annual fee will be established for each operating power reactor. The calculated fee is based on the sum of NRC budgeted costs for each FY for the following:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 20 of this chapter, or operating the Incident Response Center.

The base FY 1991 annual fees for each operating power reactor subject to fees under this section and due before September 30, 1991, are shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base annual fee for each operating power reactor. The amount of the surcharge is the sum of NRC budgeted costs for each FY for the following:

(i) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other Government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; approximately 60 percent of the low level waste disposal generic activities; uranium enrichment generic activities; and

(ii) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act. Reviews of standard reactor design applications and export and import licenses are included in this category for FY 1991 only.

(2) The FY 1991 surcharge to be added to each operating power reactor is $259,000. This amount is calculated by dividing the total cost for these activities ($28.2 million) by the number of operating power reactors (109).

(d) The FY 1991 part 171 annual fees for operating power reactors and are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]

[Fees in millions]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2.658	$.259	$2.917	$20.4
Combustion Eng	15	2.658	.259	2.917	43.8
GE Mark I	24	2.648	.259	2.907	69.8
GE Mark II	8	2.664	.259	2.923	23.4
GE Mark III	4	2.873	.259	3.132	12.5

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]—Continued

[Fees in millions]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Westinghouse	51	2.673	.259	2.932	149.5
Totals	109				$319.4

[1] Fees assessed by reactor vendor will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter except for those reactors exempted from fees under § 171.11(a), are as follows: Research reactor: $50,000, Test reactor: $50,000.

(f) For FY 1992 through 1995 annual fees for operating reactors will be calculated and assessed in accordance with § 171.13 of this section.

25. Section 171.16 is added to read as follows:

§ 171.16 Annual Fees: Material Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

(a) Person[s] who conduct activities authorized under

(1) 10 CFR part 30 for byproduct material;

(2) 10 CFR part 40 for source material, and

(3) 10 CFR part 70 for special nuclear material,

(4) 10 CFR part 71 for packaging and transportation of radioactive material, and

(5) 10 CFR part 72 for independent storage of spent nuclear fuel and high level waste:

shall pay an annual fee for each license, certificate, approval or registration the person(s) holds on the date the annual fee is due. If a person holds more than one license, certificate, registration or approval, the annual fee will be the cumulative total of the annual fees applicable to the licenses, certificates, registrations or approvals held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

(b) The basis for the annual fee is the sum of NRC budgeted costs for each FY for those

(1) Generic and other research activities directly related to the regulation of materials licenses as defined in this part; and

(2) Other safety, environmental, and safeguards activities for materials licenses (except costs for licensing and inspection activities directly associated with plant-specific licensing and inspections that are recovered under part 170 of this chapter).

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay the reduced annual fee for FY 1991 of $1,800 established for a small entity for each fee category. For each category, a materials licensee would pay the annual fee (base annual fee plus the surcharge) or $1,800, whichever is less.

(1) A licensee qualifies as a small entity if it meets the following size standards which were established by the NRC for its licensees on December 9, 1985 (50 FR 50241).

(i) For all NRC licensees except private practice physicians and educational institutions the size standard is $3.5 million or less in annual gross receipts.

(ii) For private practice physicians, the size standard is $1 million or less in annual gross receipts.

(iii) For educational institutions, the size standard is divided into two categories.

(A) State or publicly supported institutions supported by jurisdictions of over 50,000 population are large entities.

(B) Educational institutions that are not State or publicly supported and have fewer than 500 employees are small entities.

(iv) A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

(2) A licensee who seeks to establish status as a small entity for purposes of paying the annual fees required under this section shall file a certification statement with the Commission. The licensee shall file the required certification on NRC Form 526 for each license under which it is billed. The NRC shall include a copy of Form NRC 526 with each annual fee invoice sent to a licensee for purposes of billing under this section. A licensee who seeks to qualify as a small entity shall submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee shall submit a new certification with its annual fee payment each year.

(4) The maximum annual fee (base annual fee plus surcharge) a small entity is required to pay for FY 1991 is $1,800 for each category applicable to the license(s).

(d) The FY 1991 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses			Annual Fees[1] [2] [3]
1. Special nuclear material:			
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.			
	License No.	Docket No.	
High Enriched Fuel:			
Babcock and Wilcox	SNM-42	70-27	$1,500,000
Nuclear Fuel Services	SNM-124	70-143	1,500,000
United Nuclear Corp.	SNM-368	70-371	1,500,000
Low Enriched Fuel:			
Advanced Nuclear Fuels	SNM-1227	70-1257	693,000
B&W Fuel Company	SNM-1168	70-1201	693,000
Combustion Engineering (Hematite)	SNM-33	70-36	693,000
Combustion Engineering (Windsor)	SNM-1067	70-1100	693,000
General Electric Company	SNM-1097	70-1113	693,000
Westinghouse Electric Co	SNM-1107	70-1151	693,000
Surcharge			$143,500
A. (2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form			100,000
Surcharge			35,900
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)			375,000
Surcharge			1,500
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers			1,100
Surcharge			100
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)			1,600
Surcharge			1,500
2 Source material:			
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride			540,000
Surcharge			143,500
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.			
Class I facilities [4]			100,000
Other facilities			67,000
Surcharge			100
B. Licenses which authorize only the possession, use and installation of source material for shielding			290
Surcharge			100
C. All other source material licenses			2,000
Surcharge			1,500
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			6,300
Surcharge			1,500
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			3,000
Surcharge			1,500
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or § 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license			7,200
Surcharge			1,500
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or § 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license			2,600
Surcharge			100
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)			1,200
Surcharge			100
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes			2,500
Surcharge			100
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes			10,700
Surcharge			100
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter			4,300
Surcharge			100

I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,100
Surcharge	100
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	5,100
Surcharge	100
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	4,000
Surcharge	100
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	4,800
Surcharge	1,500
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	2,500
Surcharge	1,500
N. Licenses that authorize services for other licenses, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	2,900
Surcharge	1,500
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	7,800
Surcharge	100
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,400
Surcharge	100
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[8] 56,700
Surcharge	35,900
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	9,200
Surcharge	1,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	5,100
Surcharge	1,500
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	6,900
Surcharge	100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	10,000
Surcharge	1,500
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	3,300
Surcharge	1,500
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	9,600
Surcharge	100
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	8,400
Surcharge	1,500
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	3,400
Surcharge	100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,300
Surcharge	100
9. Device, product or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,100
Surcharge	100
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices	3,100
Surcharge	100
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,300
Surcharge	100
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel	660
Surcharge	100
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High Level Waste and plutonium air packages	[6] N/A
Other Casks	[6] N/A

B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	29,000
Users	1,700
Surcharge	100
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	375,000
Surcharge	100
14. Byproduct, source or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70 and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17 Master materials licenses of broad scope issued to Government agencies	200,000
Surcharge	22,500
18. DOE Certificates of Compliance	[9][10] 1,200,000

[1] Amendments based on applications filed within FY 1992 through 1995 after the applicable date of the annual fee published in the FEDERAL REGISTER notice pursuant to § 171.13 for each fiscal year that change the scope of a licensee's program or that cancel a license will not result in any refund or increase in the annual fee for that fiscal year or any portion thereof for the fiscal year filed. The annual fee will be waived where the license is terminated prior to the applicable date of the annual fee published in the FEDERAL REGISTER for each fiscal year, and the amount of the annual fee will be increased or reduced where an amendment or revision is issued to increase or decrease the scope prior to the applicable date of the annual fee published in the FEDERAL REGISTER, for each fiscal year.

If a person holds more than one license, certificate, registration, or approval, the annual fee will be the cumulative total of the annual fees applicable to the licenses, certificates, registrations or approvals held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71 or 72 of this chapter.

[3] For FYs 1992 through 1995, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 of this part and this section and will be published as a Notice in the FEDERAL REGISTER.

[4] A Class I license includes mills in operation or standby, mills with reclamation plans under review and commercial in-situ leach facilities.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for such licenses.

[6] Standardized spent fuel facilities, parts 71 and 72 Certificates of Compliance and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating such activities are primarily attributable to the users of the designs, certificates and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are operating.

[8] No annual fee is charged because it is not practical to develop an equitable and fair fee due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes all Certificates of Compliance issued to DOE.

(e) A surcharge has been added to each category, except Category 18, for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $143,400 has been added to fee Categories 1.A.(1) and 2.A.(1); an additional charge of $35,800 has been added to fee categories 1.A.(2) and 4.A.; an additional charge of $1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.B., 4.C., 5.B., 6.A., and 7.B.; and an additional charge of $22,500 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $100 has been added to each fee Category, except Categories 10.A., 11., 12., 13.A., 14., 15., 16., 17., and 18. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $100 additional charge.

26. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

The annual fee for a power reactor licensee that is subject to fees under this part that is granted a license to operate after October 1 of a FY shall be prorated on the basis of the number of days remaining in that FY. Thereafter, the full fee would be due and payable each subsequent FY. Licenses revoked, suspended, or for which the licensee has requested amendment to permanently withdraw operating authority during the FY will not result in any refund of the annual fee or any portion thereof. Any holder of a materials license, a Certificate of Compliance, a sealed source and device registration, or an approval of a QA program issued after October 1 of FYs 1992 through 1995 will be assessed an annual fee in the subsequent fiscal year.

27. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Fee payments shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Federal agencies may also make payment by either Standard Form SF-1081 (Voucher and Schedule of Withdrawals and Credits) or by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the bills to applicants or licensees, payment should be made accordingly, e.g., bills of $5,000 or more will normally indicate payment by electronic fund transfer.

(b) For FY 1991, the Commission will adjust the fourth quarterly bill for operating power reactors to recover the full amount of the revised annual fee. All other licensees, or holders of a certificate, registration, and approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of this rule and interest shall accrue from the effective date of this rule. However, interest will be waived if payment is received within 30 days from the effective date of this rule.

(c) For FYs 1992 through 1995, annual fees in the amount of $100,000 or more and described in the **Federal Register** Notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent. A quarterly installment is due on October 1, January 1, April 1 and July 1 of each FY. Annual fees of less than $100,000 shall be paid once a year during the first quarter of the FY as billed by the Commission. For FY 1992 only, the NRC will defer issuing the first quarterly bills for annual fees greater than $100,000 or bills for annual fees less than $100,000 until December 1991.

28. § 171.23 is revised to read as follows:

§ 171.23 Enforcement.

If any person required to pay the annual fee fails to pay when the fee is due, or files a false certification with respect to qualifying as a small entity under the Regulatory Flexibility Criteria, the Commission may refuse to process any application submitted by or on

behalf of the person with respect to any license issued to the person and may suspend or revoke any licenses held by the person. The filing of a false certification to qualify as a small entity under § 171.16(c) of this part may also result in punitive action pursuant to 18 U.S.C. 1001.

29. § 171.25 is revised to read as follows:

§ 171.25 Collection, interest, penalties, and administrative costs.

All annual fees in §§ 171.15 and 171.16 will be collected pursuant to the procedures of 10 CFR part 15. Interest, penalties and administrative costs for late payments will be assessed in accordance with 10 CFR part 15, of this chapter, 4 CFR part 102, and other relevant regulations of the United States Government, as appropriate. In the event a quarterly installment is not made by the appropriate due date specified in § 171.19, the full fee becomes due and payable, with interest, penalties, and administrative costs of collection calculated from the date that quarterly installment was due.

Dated at Rockville, Maryland this 28th day of June, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

Note: This appendix will not appear in the Code of Federal Regulations.

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) establishes as a principle of regulatory practice, that agencies shall endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in the consideration of impacts under the Regulatory Flexibility Act, the NRC has adopted size standards for determining which NRC licensees qualify as small entities (December 9, 1985; 50 FR 50241). These size standards are as follows:

(1) For all NRC licensees, except physicians in private practice and educational institutions, the size standard is $3.5 million or less in annual gross receipts.

(2) For physicians in private practice, the size standard is $1 million or less in annual gross receipts.

(3) For educational institutions, the size standard is divided into two categories:

(i) State or publicly supported educational institutions supported by jurisdictions with a population of 50,000 or less are defined as small entities.

(ii) Educational institutions that are not State or publicly supported and have 500 or fewer employees are small entities.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for fiscal years 1991 through 1995 by assessing license and annual fees. Thus, the NRC must collect approximately $445 million through these fees for FY 1991 by September 30, 1991.

To comply with Public Law 101–508, the Commission proposed amendments to its fee regulations in 10 CFR parts 170 and 171. Consistent with the Conference Report accompanying the Public Law, the NRC fairly and equitably allocated its budget costs. This resulted in the assessment of annual fees for all classes of licensees, including those classes of licensees with a substantial number of small entities.

II. Impact on Small Entities

Based on previous surveys and the comments received on the proposed fee rule revisions, NRC licensees that meet the size standard for a small entity are primarily those licensed under the agency's materials program. Therefore, this analysis will focus on the economic impact on materials licensees.

The amendments to the Commission's fee regulations would result in a substantial increase in the fees currently charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these material licensees, the NRC estimates that approximately 35 percent (about 3,000 licensees) would qualify as a small entity. Therefore, in recognition of this substantial number of small entities, the NRC requested comments from small entities on the proposed rule. Comments were specifically requested on (1) how the proposed regulations would affect each class of licensee, and (2) how the regulations could be structured to further minimize the economic impact on the licensee, but still meet the statutory mandate of Public Law 101–508.

For materials licensees, the increase in fees consists of (1) an increase of 25 percent in the license and inspection fees currently assessed under 10 CFR part 170, and (2) a new annual fee assessed under 10 CFR part 171 that ranges from $290 to over $10,000. A number of small entities indicated in their comments that the 25 percent increases in license and inspection fees, although not desirable, would not have a significant economic impact on them. However, many of the materials licensees commented on the negative economic impact of the new annual fee. Therefore, this regulatory flexibility analysis will concentrate on the new annual fee.

The commenters indicated the following results if the proposed annual fee was not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well logging company ("mom and pop") would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put them at an extreme disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their license. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in around 10 percent of the well logging licensees terminating their license immediately and approximately 25 percent terminating their license before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Although it is not clear to what extent these effects would materialize if the proposed fees are assessed, it is clear that the proposed fees would be a relatively high portion of the gross revenues of some licensees and far less a portion for large material licensees. Therefore, the NRC concludes that alternatives, in accordance with the Regulatory Flexibility Act, should be considered because of the significant impact on a substantial number of small entities.

III. Alternatives

The commenters' suggested alternatives to reduce the impact on small entities are categorized as follows:

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The first alternative would result in the annual fee being in direct proportion to the amount of radioactivity (e.g., number of radioactive sources) possessed by the licensee, independent of whether the licensee meets the size standard for a small business. Thus, a large diversified firm that owns one source would get a reduced fee, while a small entity, whose business may depend solely on the use of radioactive materials, would pay a larger fee because it has more than one source. Thus, this alternative does not necessarily achieve the goal of the Regulatory Flexibility Act to minimize the impact on small entities. The NRC also believes that this approach would not result in a fair and equitable allocation of its generic and other costs not recovered under part 170. Therefore, this approach was rejected.

For reasons similar to those for which NRC rejected the first alternative, basing the fee on the frequency of use of the licensed radioactive source, the second alternative, would not necessarily reduce the cost for small entities that meet the size standards discussed earlier.

The last alternative would base fees on the size standards that the NRC has used to define small entities. This alternative would ensure that any benefits from modification of the proposed fees would apply only to small entities. Three basic options, each using the NRC size standards, were considered for modifying the annual fees imposed on small entities:

1. Exempt all small entities that meet the size standards from annual fees.

2. Require small entities to pay a fixed percent of the amount of the fee in each of the specific material license fee categories.

3. Establish a maximum fee for small entities.

Under Option 1, all small entities would be exempted from fees. This could be viewed as not being consistent with the objectives of Public Law 101–508, because small entities would not pay any of the generic costs attributable to their class of licensees. This would result in the annual fees attributable to small entities being totally paid by other NRC licensees.

Under Option 2, the small entities would pay a percent (e.g. 50 percent) of the proposed fee for each specific category of material license, regardless of how small or large the fee is. This could lead to a reduction in annual fees that are already relatively small and do not have a significant impact on a substantial number of small entities. On the other hand, for fee categories with large annual fees, the percentage of reduction may result in assessing relatively large fees for small entities licensed under those fee categories.

Option 3 would establish a maximum fee for all small entities. Under this option, a small entity would pay the smaller of the annual fee for the category or the maximum small entity fee. This alternative would strike a balance between the requirements of Public Law 101–508 and the Regulatory Flexibility Act, which is to consider and reduce, as appropriate, the impact of an agency's regulatory actions on small entities. Therefore, the NRC has adopted Option 3 as the most appropriate to reduce the impact on small entities.

IV. Maximum Fee

To implement Option 3, the NRC must establish a maximum small entity fee. The Regulatory Flexibility Act and implementing guidance do not provide specific guidance on the amount or the percent of gross receipts that should be charged to a small entity. To determine a maximum annual fee for a small entity, the NRC examined the current NRC 10 CFR part 170 license and inspection fees and Agreement State fees for those fee categories which are expected to have a substantial number of small entities. Because these fees are currently charged to small entities, the NRC believes that these fees do not have a significant impact on them. In fact, the NRC concluded, in issuing the existing rule, that the existing materials license fees do not have a significant impact on small entities.

The maximum fees per year that are currently charged by several Agreement States and the NRC for materials license fee categories with a significant number of small entities are shown below.

	Current maximum average total fee per year
Washington	$3,760
Texas	2,100
Illinois	2,000
NRC	1,590
Nebraska	1,460
New York	1,030
Utah	440

Table 1 shows the estimated total fees (part 170 plus part 171) for materials licensees, assuming maximum annual fees for small entities of $2,000 or $1,500 and an average number of licensing actions and inspections per year. If the maximum annual fee for small entities is established at $2,000, the average fee per year for all of the categories would be below the approximately $3,800 maximum fee charged by Agreement States, except for radiography, waste receipt and packaging, and broad scope medical licensees. The broad scope medical, and waste receipt and packaging licensees are primarily large entities. Therefore, with a $2,000 maximum small entity annual fee and the average license and inspection fees, only small entities who are radiographers would pay slightly more than the current maximum Agreement State fee of approximately $3,800. If the maximum fee is reduced by $200 (from $2,000 to $1,800), then all categories of material licensees, including radiographers, would pay no more for each category than the current maximum fee of about $3,800 if the licensee qualifies as a small entity.

By establishing the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, would pay for most of the costs ($22.3 million of the total $27.2 million) attributable to them. For the above reasons, the NRC has established the maximum annual fee (base annual fee plus surcharge) for small entities at $1,800 for each fee category covered by each license issued to a small entity. This will reduce the impact on many small entities. Note that the costs ($4.9 million) not recovered from small entities would be allocated to other material licensees and to operating power reactors.

V. Summary

Comments received on the proposed rule provided additional evidence that the proposed rule would significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirements to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum fee of $1,800 would reduce the impact on small entities and, at the same time, the reduced fee would be consistent with the objectives of Public Law 101–508.

TABLE 1.—AVERAGE TOTAL SMALL ENTITY FEES PER YEAR

License fee category	Total small entity fee *	
	Max annual fee=$2K	Max annual fee=$1.5K
Special Nuclear Material (SNM):		
1C. Industrial Gages	$1,672	$1,672
1D. All Other SNM	2,506	2,006
Source Material:		
2B. Shielding	463	463
2C. Other Source Materials	2,867	2,367
Byproduct Material:		
3A. Manufacturing—Broad	3,560	3,060
3B. Manufacturing—Other	3,343	2,843
3C. Radiopharmaceuticals	3,207	2,707
3D. Radiopharmaceuticals—Manufacturing	2,677	2,177
3E. Irradiators—Self-Shield	1,699	1,699
3F. Irradiators—<10,000 Ci	2,623	2,123
3G. Irradiators—>10,000 Ci	3,840	3,340
3H. Exempt Distribution—Device Review	2,815	2,315
3I. Exempt Distribution—No Device Review	2,682	2,182
3J. Gen. License—Device Review	2,679	2,179
3K. Gen. License—No Device Review	2,708	2,208
3L. R&D—Broad	3,210	2,710
3M. R&D—Other	3,050	2,550
3N. Service License	2,733	2,233
3O. Radiography	4,050	3,550
3P. All Other Byproduct Materials	2,120	2,120
Waste Disposal and Processing:		
4B. Waste Receipt/Packaging	4,680	4,180

TABLE 1.—AVERAGE TOTAL SMALL ENTITY FEES PER YEAR—Continued

License fee category	Total small entity fee *	
	Max annual fee=$2K	Max annual fee=$1.5K
4C. Waste Receipt—Prepackaged	3,216	2,716
Well Logging:		
5A. Well Logging	3,207	2,707
Nuclear Laundry:		
6A. Nuclear Laundry	3,030	2,530
Human Use of Byproduct, Source, or SNM:		
7A. Teletherapy	3,788	3,288
7B. Medical—Broad	4,360	3,860
7C. Medical Other	3,130	2,630

TABLE 1.—AVERAGE TOTAL SMALL ENTITY FEES PER YEAR—Continued

License fee category	Total small entity fee *	
	Max annual fee=$2K	Max annual fee=$1.5K
Civil Defense:		
8A. Civil Defense	1,789	1,789
Device, Product, or Sealed Source Safety Evaluation:		
9A. Device/Product—Broad	3,200	2,700
9B. Device/Product—Other	2,580	2,080
9C. Sealed Sources—Broad	1,530	1,530

TABLE 1.—AVERAGE TOTAL SMALL ENTITY FEES PER YEAR—Continued

License fee category	Total small entity fee *	
	Max annual fee=$2K	Max annual fee=$1.5K
9D. Sealed Sources—Other	770	770

* Based on average 10 CFR part 170 fees plus maximum annual fee.

[FR Doc. 91-15935 Filed 7-9-91; 8:45 am]

BILLING CODE 7590-01-M

federal register

Wednesday
July 10, 1991

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

June 28, 1991.

Dear Mr. President: In accordance with the Impoundment Control Act of 1974, I herewith report two proposed rescissions totaling $542,000,000 and two revised deferrals of budget authority now totaling $2,950,976,437. Including the revised deferrals, funds reported as withheld now total $10.2 billion.

The proposed rescissions affect the Departments of Commerce and Housing and Urban Development. The deferrals affect International Security Assistance and the Department of Health and Human Services. The details of the deferrals and proposed rescissions are contained in the attached report.

Sincerely,

George Bush

The Honorable Dan Quayle
President of the Senate
Washington, D.C. 20510

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Commerce:	
	Economic Development Administration:	
R91-28	Economic development assistance programs	115,000
	Department of Housing and Urban Development:	
	Housing Programs:	
R91-29	Annual contributions for assisted housing	427,000
	Total rescissions	**542,000**

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D91-1C	Economic support fund	2,943,659
	Department of Health and Human Services:	
	Social Security Administration:	
D91-5A	Limitation on administrative expenses	7,317
	Total deferrals	**2,950,976**

SUMMARY OF SPECIAL MESSAGES
FISCAL YEAR 1991
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Fifth special message:		
New items	542,000	---
Revisions to previous special messages..	---	850,190
Effects of the fifth special message	542,000	850,190
Amounts from previous special messages.	4,312,251	9,342,646
TOTAL amount proposed to date in all special messages	4,854,251	10,192,836

R91-28

DEPARTMENT OF COMMERCE

Ecomomic Development Administration

Economic development assistance programs

Of the funds made available under this heading in Public Law 101-515, $115,000,000 are rescinded.

Rescission Proposal No. R91-28

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Commerce	New budget authority..... 209,000,000 (P.L. 101-515) Other budgetary resources.. 14,997,283 Total budgetary resources... 223,997,283
BUREAU: Economic Development Administration	
Appropriation title and symbol: Economic development assistance programs 1312050	Amount proposed for rescission..... 115,000,000
OMB identification code: 13-2050-0-1-452	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multi-year _____ (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: Although originally designed to aid distressed areas, more than 80 percent of the country is now eligible for EDA assistance. In addition, decisions on local economic investments that yield only local benefits are best made and paid for at the local level. This action is taken to offset partially supplemental funding requirements of the Disaster Relief account of the Federal Emergency Management Agency as required by the Omnibus Budget Reconciliation Act of 1990.

ESTIMATED PROGRAM EFFECT: Approximately 400 projects would not receive EDA assistance. Many of these projects would go forward with larger contributions from State and local governments and private investors.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
173,055	161,055	-12,000	-36,000	-36,000	-22,000	-8,000	-1,000

R91-29

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Annual contributions for assisted housing

Of the funds made available under this heading in Public Law 101-507, $427,000,000 are rescinded: Provided, That $132,000,000 shall be rescinded from amounts made available under the section 8 existing certificate program (42 U.S.C. 1437(f)), of which $30,000,000 shall be rescinded from the amounts available for eligible tenants affected by the demolition or disposition of public housing (including units occupied by Indian families) and $102,000,000 shall be rescinded from the amounts made available for certificates to assist in the relocation of other eligible tenants or for project-based section 8 assistance to help implement plans of action approved under title II of the Housing and Community Development Act of 1987: Provided further, That $139,000,000 shall be rescinded from amounts made available for the housing voucher program under section 8(o) of the Act (42 U.S.C. 1437 (o)): Provided further, That $156,000,000 shall be rescinded from amounts available for section 8 assistance for property disposition.

Rescission Proposal No. R91-29

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... 8,758,176,000 (P.L. 101-507) Other budgetary resources.. 1,046,652,557 Total budgetary resources... 9,804,828,557
BUREAU: Housing	
Appropriation title and symbol: Annual contributions for assisted housing 86X0164	Amount proposed for rescission..... 427,000,000
OMB identification code: 86-0164-0-1-999	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year _____ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation funds various subsidized housing programs. A rescission of $427,000,000 is proposed in FY 1991 funds from funds for vouchers, certificates, and other assistance. These funds are no longer required in FY 1991 to relocate existing tenants from public or privately-owned housing. The rescission would reduce section 8 funds as follows:

a) $132 million from certificates, including $102 million from opt-out certificates and $30 million from certificates for public housing demolition or disposition;
b) $139 million from vouchers, including $116 million from vouchers for public housing relocation and $23 million from opt-out vouchers; and
c) $156 million from assistance for property disposition.

This action is taken to offset partially supplemental funding requirements of the Disaster Relief account of the Federal Emergency Management Agency as required by the Omnibus Budget Reconciliation Act of 1990.

ESTIMATED PROGRAM EFFECT: This rescission would reduce funding for section 8 housing programs.

Rescission Proposal No. R91-29

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
13,641,074	13,629,941	-11,133	-37,761	-54,380	-56,304	-57,600	-57,600

Deferral No. D91-1C

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D91-1B transmitted to Congress on February 28, 1991.

This revision increases by $850,000,000 the previous deferral of $2,093,659,386 in the Economic support fund, resulting in a total revised deferral of $2,943,659,386. The increase results from the temporary withholding of funds made available by P.L. 102-27, the Dire Emergency Supplemental Appropriations Act.

Deferral No. 91-1C

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... * $ 4,035,472,635 (P.L. 101-513 and 102-27)
BUREAU: International Security Assistance	Other budgetary resources..... * 301,607,953
Appropriation title and symbol: Economic support fund 1/ 111/21037 11101037 * 11X1037 110/11037	Total budgetary resources..... * 4,337,080,588 Amount to be deferred: Part of year.....2/. * $ 2,943,659,386 Entire year..... ____
OMB identification code: 11-1037-0-1-152	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [X] Annual [X] Multi-year: September 30, 1991 / September 30, 1992 (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code		Deferred Amount Reported
Economic support fund.....	11x1037	11-1037-0-1-152	$	40,219,102
Economic support fund.....	111/21037	11-1037-0-1-152		1,904,121,000
Economic support fund.....	110/11037	11-1037-0-1-152		149,319,284
Economic support fund.....*	1111037	11-1037-0-1-152	*	850,000,000
			*	2,943,659,386

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1990 (D90-1C).

2/ The deferred amount has been reduced to $824,702,908 due to subsequent releases.

* Revised from previous report.

Deferral No. D91-5A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D91-5 transmitted to Congress on October 4, 1990.

This revision increases by $190,233 the previous deferral of $7,126,818 in the Social Security Administration, Limitation on Administrative expenses, resulting in a total revised deferral of $7,317,051. The increase results from higher-than-anticipated carryover of unobligated balances for construction projects from FY 1990.

Deferral No. 91-5A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... _____
BUREAU: Social Security Administration	Other budgetary resources..... * $ 15,271,079
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	Total budgetary resources..... * $ 15,271,079
	Amount to be deferred: Part of year..... _____ Entire year..... * $ 7,317,051
OMB identification code: 20-8007-0-7-651	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

*JUSTIFICATION: This account contains the no-year funds appropriated to the Social Security Administration (SSA) prior to FY 1990 for construction and renovation of SSA facilities, and for Information Technology Systems (ITS). It has been determined that obligational authority for construction projects in the amount of this deferral is not currently needed. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1990 (D90-5A).

* Revised from previous report.

[FR Doc: 91-16331 Filed 7-9-91; 8:45 am]
BILLING CODE 3110-01-C

federal register

Wednesday,
July 10, 1991

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 500, 503, 541, 545, and 546
Control, Custody, Care, Treatment, and Instruction of Inmates; Miscellaneous Editorial Changes. Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers; Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500, 541, 545, and 546

Control, Custody, Care, Treatment and Instruction of Inmates; Miscellaneous Editorial Changes

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is updating its regulations by removing redundant provisions relating to inmate accident compensation, by amending the definition of "inmate", by making a nomenclature change regarding health service units, and by making editorial corrections recently published regulations on inmate work and performance pay and security level designations. The intent of these changes is to improve the organization and clarity of the regulations, to conform Bureau provisions to changes in the United States Code, to maintain consistency in terminology, and to correct inadvertent typographical errors

EFFECTIVE DATE: The corrections to § 541.22, the authority citation for part 545, and §§ 545.23 and 545.24 are effective July 1, 1991. All other amendments are effective on July 10, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is updating its regulations by removing redundant provisions relating to inmate accident compensation. The Bureau revised procedures on Inmate Accident Compensation contained in 28 CFR part 301 in the **Federal Register** of March 12, 1990 (55 FR 9296). Inmates receive direct notification of the procedures contained in 28 CFR part 301 as part of the Admission and Orientation Program. The provisions in 28 CFR part 546, subpart C, are therefore redundant, and are consequently being removed. The Bureau is also updating its rule on Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others contained in 29 CFR part 541, subpart E, in order to make a nomenclature change; The phrase "health service unit" is being used in place of "hospital". In § 500.1, the Bureau is removing the obsolete reference to Federal Community Treatment Center and, in recognition of the statutory change in 18 U.S.C. 3621, the Bureau is amending the definition of "inmate'. Finally, the Bureau is correcting typographical errors in the authority citation and in §§ 545.23(a) and 545.24(e) which appeared in the final rule on inmate work and performance pay published in the **Federal Register** on May 21, 1991 (56 FR 23477 et seq.) and makes an additional nomenclature change in § 541.22(a)(6)(iii) which was inadvertently omitted from the interim rule published in the **Federal Register** on February 1, 1991 (56 FR 4158 *et seq.*).

Because these changes pose no additional restrictions and are editorial in nature, the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 500, 541, 545, and 546

Prisoners.

Patrick R. Kane,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapters A and C of 28 CFR chapter V are amended as set forth below.

Subchapter A—General Management and Administration

PART 500—GENERAL DEFINITIONS

1. The authority citation for 28 CFR part 500 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 500.1, paragraph (a) is amended by removing the phrase "Federal Community Treatment Center," and paragraph (c) is amended by revising the first sentence to read as follows:

§ 500.1 Definitions.

* * * * *

(c) *Inmate* means any person who is committed to the custody of the Bureau of Prisons (18 U.S.C. 3621, for offenses committed on or after November 1, 1987) or who is committed to, or in the custody of, the U.S. Attorney General (18 U.S.C. 4082, for offenses committed before November 1, 1987) and who is placed in, or designated to be placed in, a Bureau of Prisons institution. * * *

* * * * * *

Subchapter C—Institutional Management

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

3. The authority citation for 28 CFR part 541 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161-4166 (Repealed as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 541.22 [Corrected]

4. In § 541.22, paragraph (a)(6)(iii) is corrected by revising, in the second sentence, the phrase "a Security Level 6 institution" to read "the United States Penitentiary, Marion,".

§ 541.62 [Amended]

5. In § 541.62, paragraph (c) is amended by revising, in the first sentence, the phrase "secure hospital room" to read "secure health service unit room".

PART 545—WORK AND COMPENSATION

6. The authority citation for 28 CFR part 545 is corrected to read as follows

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 545.23 [Corrected]

7. Section 545.23(a) is corrected by revising, in the second sentence, the phrase "or either a full or part-time basis" to read "on either a full or part-time basis".

§ 545.24 [Corrected]

8. Section 545.24(e) is corrected by revising, in the second sentence, the phrase "event to" to read "event of".

PART 546—[Removed]

9. 28 CFR part 546 is removed.

[FR Doc. 91-16414 Filed 7-9-91; 8:45 am]
BILLING CODE 4410-05-M

28 CFR Part 503

Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending the listing of its Central Office, Regional Offices, Institutions, and Staff Training Centers in order to reflect the designation of the former Federal Detention Center at Oakdale, Louisiana (Oakdale I) as a Federal Correctional Institution, the designation of the former Federal Deportation Center at Oakdale, Louisiana (Oakdale II) as a Federal Detention Center, the designation of a new Federal Medical Center at Carville, Louisiana, the designation of a new Federal Correctional Institution at Schuylkill, Pennsylvania, and the removal of the Federal Detention Center at Fort Gordon, Georgia.

EFFECTIVE DATE: July 10, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its listing of Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers which was last revised in the **Federal Register** on July 23, 1990 (55 FR 29990 *et seq.*) in order to reflect changes in the listing of Bureau institutions as announced in the **Federal Register** on November 21, 1990 (55 FR 48803) and on May 21, 1991 (56 FR 23481).

Because this rule deals with agency organization and imposes no restrictions upon inmates, the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 503

Agency organization and functions.

Patrick R. Kane,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter A of 28 CFR chapter V is amended as set forth below.

Subchapter A—General Management and Administration

PART 503—BUREAU OF PRISONS CENTRAL OFFICE REGIONAL OFFICES, INSTITUTIONS, AND STAFF TRAINING CENTERS

1. The authority citation for 28 CFR part 503 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4003, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 503.2, a new paragraph (b)(7) is added to read as follows:

§ 503.2 Bureau of Prisons Northeast Regional Office.

* * * * *

(b) * * *

(7) FCI Schuylkill, Pennsylvania 17954.

* * * * *

§ 503.4 Bureau of Prisons Southeast Regional Office.

3. In § 503.4, paragraph (e) is removed.

4. In § 503.6, paragraphs (a) (7) through (9) are redesignated as paragraphs (a) (8) through (10); a new paragraph (a)(7) is added; newly designated paragraph (a)(10) is amended by removing the parenthetical phrase "(to open in late 1990)"; and paragraphs (c) and (d) are revised to read as follows:

§ 503.6 Bureau of Prisons South Central Regional Office.

* * * * *

(a) * * *

(7) FCI Oakdale, Louisiana 71463

* * * * *

(c) Federal Medical Center (FMC), Carville, Louisiana 70721.

(d) Federal Detention Center, Oakdale, Louisiana 71463.

[FR Doc. 91-16415 Filed 7-9-91; 8:45 am]
BILLING CODE 4410-05-M

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Wednesday, July 10, 1991

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